148 U.S. 627

RECORD, CASE No. 13,752.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1892.

TERM No., 167.

SOLON HUMPHREYS AND THOMAS E. TUTT, RECEIVERS OF THE WABASH, ST. LOUIS AND PACIFIC RAILWAY COMPANY, APPELLANTS,

vs.

JOHN H. PERRY, ARTHUR J. PERRY, JAMES K. PERRY, AND FRANK A. PERRY, PARTNERS UNDER THE FIRM NAME OF PERRY BROTHERS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED OCTOBER 12, 1889.

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INDEX.

	Original.	Print.
Caption	1	1
Order granting leave to file intervening petition	2	1
Petition of intervenors	3	2
Answer of the receivers	7	4
Order referring petition to master	11	5
Exceptions to master's report	12	6
Master's report	14	6
Order taking petition under advisement	50	21
Opinion of Judge Gresham	51	21
Decree	54	22

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	Original.	Print.
Evidence before the master	56	23
Testimony of Arthur J. Perry	57	23
Edward J. Krampff	69	31
George M. Johnson	85	41
Charles W. Turner	94	46
Charles A. Fisher	99	49
Leverette J. Norton	101	50
Theodore Kearney	103	51
C. H. Spencer	105	53
John H. Perry	108	55
Charles Melville	115	59
F. L. Tompkins	122	64
Charles Melville (recalled)	129	68
John North	130	69
H. G. Granneman	134	72
Lincoln Bushong	137	74
Azro Johnson	148	81
Charles Wendell	156	87
Thomas Goldsby	164	92
Joseph Watkins	167	94
James Kelley	171	97
J. B. Teneyck	176	100
Daniel Sullivan	184	104
Elijah Watkins	191	109
Charles Davis	199	114
Nicholas Thomas	201	115
Stipulation as to sale of thousand-mile tickets, &c.	205	117
Exhibit A—Railroad check	206	117
B—Statement of account	207	118
C and D—Diagrams	226	141
E—Diagram	227	141
Testimony of J. W. Paterson	228	141
Prayer for appeal	244	151
Order allowing appeal	245	151
Appeal bond	246	152
Certificate of clerk	248	153

1 Pleas in the circuit court of the United States of America for the northern district of Illinois, held at the United States court-rooms, in the city of Chicago, in the district aforesaid, before the Hon. Walter Q. Gresham, judge of the circuit court of the United States for the seventh judicial circuit, on Monday, the twenty-ninth day of July, in the July term of said court, in the year of our Lord one thousand eight hundred and eighty-nine, and of our Independence the one hundred and fourteenth year.

WM. H. BRADLEY, *Clerk.*

THE WABASH, ST. LOUIS AND PACIFIC RAILWAY COMPANY
vs.
THE CENTRAL TRUST COMPANY OF NEW YORK *et al.* } In Chancery.

In the matter of the intervening petition of John H. Perry, Arthur J. Perry, James K. Perry, and Frank A. Perry, partners under the name and style of Perry Brothers.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered that on the twenty-eighth day of May, in the adjourned May term of said court, 1886, in the record of the proceedings thereof in the said entitled cause, before Hon. Henry
2 W. Blodgett, district judge, is the following entry, to wit:

Order.

WABASH, ST. LOUIS AND PACIFIC RAILWAY COMPANY
vs.
CENTRAL TRUST COMPANY OF NEW YORK *et al.* } In Chancery.

On motion of F. C. Hale, Esq., leave is hereby given John H. Perry *et al.* to file an intervening petition, and the receivers herein are ruled to answer the same within twenty days after notice hereof is sent by mail to Wells H. Blodgett, Esq., solicitor for said receivers, at St. Louis, Missouri.

3 On the same day, to wit, on the twenty-eighth day of May, 1886, came John H. Perry *et al.*, by their solicitor, and filed in said clerk's office their petition in said entitled cause; which said petition is in the words and figures following, to wit:

Petition.

UNITED STATES OF AMERICA,
Northern District of Illinois, } *ss:*

United States Circuit Court, Northern District of Illinois.

THE CENTRAL TRUST COMPANY OF NEW YORK
ats.
THE WABASH, ST. LOUIS AND PACIFIC RAILWAY COMPANY.

Intervening petition of Perry Bros.

To the honorable judges of said court, in chancery sitting:

Your petitioners, John H., Arthur J., James K., and Frank A. Perry, respectfully represent unto your honors that they are residents of said district and partners in the business of selling jewelry and watches at wholesale, under the firm name and style of Perry Bros., and that the principal office of said firm is at Chicago, in said district; that on or about January 30th, 1885, the said Arthur J. Perry, in carrying on the said business of said firm, bought
4 and paid for a ticket for his passage from Springfield, Illinois, to Petersburg, Illinois, over and upon the road of said complainant, running between the two places last named, and at the same time checked with said complainant a trunk containing jewelry, watches, and merchandise of said firm such as was necessary for him to take with him in prosecuting the business of said firm, and such as is usually taken as baggage by travelling salesmen in prosecuting business similar to that of your orators, for transportation by said complainant from Springfield to Petersburg aforesaid, and for the transportation of said trunk paid the said complainant a sum of money additional to that he had already paid for his ticket as aforesaid, and thereupon said Arthur J. entered the coach of said complainant and the said trunk was by the agents of said complainant placed in the baggage car of said complainant en route for Petersburg aforesaid, but that shortly before reaching Petersburg, by reason of the negligence and carelessness of said complainant in constructing, laying, and repairing its road-bed and track, and in running the said train, the cars of said complainant containing said Arthur J. and said trunk were derailed and the baggage car containing said trunk was overturned and rolled down an embankment, and at the foot of said embankment, by reason of the negligence and carelessness of said complainant in using
5 in said baggage car an unsafe, improper, and dangerous kind of stove and in having said stove unsecured or improperly secured, said baggage car caught on fire and was totally consumed, together with said trunk, and the watches, jewelry, and merchandise of your orators in said trunk were almost totally destroyed.

That the value of said trunk and the contents was nine thousand eight hundred and eighteen and $\frac{46}{100}$ dollars ($9,818.46), and that

your orators recovered from the debris of said baggage-car a small portion of said merchandise not to exceed in value the sum of six hundred dollars, so that the loss of your orator as aforesaid amounts to the sum of ninety-two hundred and eighteen and $\frac{46}{100}$ dollars (9,218.46).

Your orators further represent unto your honors that on or about May 29th, 1884, by an order of the circuit court for the eastern district of Missouri and also by this honorable court by an order heretofore entered in the above-entitled suit, Solon Humphreys and Thomas E. Tutt were appointed receivers of said complainant, and that said receivers had possession of and were operating all the divers railways and lines of the complainant, including said road from Springfield to Petersburg, at the time of the loss of said trunk as aforesaid; that shortly after the said loss your orators
6 made out a full itemized statement and valuation of all the articles contained in said trunk, and presented the same to said receivers or their agent at St. Louis, Missouri, together with an affidavit of their loss, as a claim against said receivers, but that said receivers have hitherto failed and refused to allow such claim of your orators, and that the same remains wholly unpaid.

Wherefore may it please your honors to grant an order that your petitioners may file this their intervening petition in said suit, and that said receivers may be ordered to answer your petitioners' claim against them and said complainant for damages as aforesaid.

JOHN H. PERRY.
ARTHUR J. PERRY.
JAMES K. PERRY.
FRANK A. PERRY.

FREDERICK C. HALE, *Solicitor.*
RICHARD S. TUTHILL &
F. C. HALE, *Of Counsel.*

UNITED STATES OF AMERICA,
Northern District of Illinois, } ss:

Arthur J. Perry, being duly sworn, states on oath that he has heard read the foregoing petition by him subscribed and knows the contents thereof, and that the same is true in substance and in fact.

ARTHUR J. PERRY.

Subscribed and sworn to before me this 27th day of May, A. D. 1886.

7 [SEAL.]

R. W. BRIDGE,
Notary Public.

(Endorsed:) Filed May 28, 1886. Wm. H. Bradley, clerk.

Afterward, to wit, on the thirtieth day of June, 1886, came Solon Humphreys and Thomas E. Tutt, receivers, by their solicitors, and filed in said clerk's office their answer to the petition of Perry

Brothers in said entitled cause; which said answer is in the words and figures following, to wit:

Answer.

In the Circuit Court of the United States, Northern District of Illinois.

THE CENTRAL TRUST COMPANY OF NEW YORK *et al.*
vs.
THE WABASH, ST. LOUIS & PACIFIC RAILWAY COMPANY *et al.*

The answer of Solon Humphreys and Thomas E. Tutt, receivers, to the intervening petition of John H. Perry, Arthur J. Perry, James K. Perry, and Frank A. Perry.

These defendants, saving and reserving unto themselves
8 all and all manner of benefit and advantage of exception which can or may be had or taken to said intervening petition, for answer thereto, or to so much or such parts thereof as they are advised is material for them to make answer unto, answering, say:

They admit it to be true, as averred in said intervening petition, that on or about the 29th day of May, 1884, by an order of the circuit court of the United States for the eastern district of Missouri, and also of this honorable court, they were appointed receivers of said Wabash, St. Louis and Pacific Railway Company, and that they, as said receivers, had possession of and were operating all the lines of railway of said Wabash, St. Louis and Pacific Railway Company, including the line of road from Springfield to Petersburg, on or about January 30th, 1885.

Said defendants, for further answer, say that at the time in question they were not prepared to carry articles of jewelry and watches as baggage, and did not undertake nor advertise themselves to the public as ready or willing to transport the same; that by the rules of said receivers then in force, and well known to said intervenors, the agents and servants of said receivers were not allowed to take trunks containing jewelry, watches, and valuable merchandise as baggage.

That on said day Arthur J. Perry, one of the intervenors herein,
presented to the agent of these defendants at Springfield,
9 Illinois, the trunk in question, and demanded a check therefor, and these defendants then and there undertook to carry said trunk as containing only the personal baggage of said Perry; that said Perry then and there wrongfully concealed from said agent the fact that said trunk contained jewelry, watches, or valuable merchandise, and by reason of such wrongful conduct and fraudulent concealment of the contents of said trunk and the value thereof secured a check for said trunk from said agent as baggage, and that by virtue of said trunk being so checked as aforesaid it was placed by the agent of these defendants in a baggage car and

transported as ordinary baggage by said receivers over said line of road; that before reaching Petersburg, on said day, the train containing the baggage car in which said trunk had been placed became derailed, wholly without fault or negligence on the part of said receivers or their agents or servants, and, without any fault or negligence on the part of said receivers or their agents or servants, said baggage car caught fire after being so derailed and destroyed a portion of the contents of said trunk so wrongfully and fraudulently shipped as baggage by said intervenor as aforesaid.

These defendants do not know and are not informed, except by said intervening petition, as to the value of said jewelry so
10 destroyed as aforesaid, and they therefore neither admit nor deny the allegations of said intervening petition in respect to such value.

Said defendants deny that the derailment of said train was caused by any negligence on the part of themselves or the servants in their employ.

Defendants deny that the intervenors are entitled to the relief prayed for or to any other relief; and, having fully answered, pray to be hence dismissed, etc.

SOLON HUMPHREYS,
THOMAS E. TUTT, *Receivers*,
By WELLS H. BLODGETT,
GEO. B. BURNETT, *Solicitors*.

(Endorsed:) Filed June 30, 1886. Wm. H. Bradley, clerk.

11 On the same day, to wit, on the thirtieth day of June, in the adjourned May term of said court, 1886, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

WABASH, ST. LOUIS AND PACIFIC RAILWAY COMPANY *vs.* CENTRAL TRUST COMPANY OF NEW YORK *et al.*	In Chancery.

On motion of Mr. ——, the petition of Perry Brothers, filed herein, is hereby referred to E. B. Sherman to take proof and report the same to the court.

12 Afterward, to wit, on the twenty-second of October, 1888, came the receivers, by their solicitors, and filed in said clerk's office their exceptions to the master's report in said entitled cause; which said exceptions are in the words and figures following, to wit:

Exceptions to Report.

In the Circuit Court United States, Northern District Illinois.

WABASH, ST. LOUIS & PACIFIC RAILWAY COMPANY
against
CENTRAL TRUST COMPANY OF NEW YORK *et al.* } Equity.

In the matter of the intervening petition of Perry Brothers.

Now comes Solon Humphreys and Thomas E. Tutt, receivers, and excepts to the report of Hon. E. B. Sherman, master, filed herein, and for cause of exceptions show to the court here the following:

The findings of the master *is* contrary to the evidence taken in the cause.

The findings of the master *is* contrary to the law.

The findings of the master *is* contrary to the law and the evidence.

Upon the evidence before the master and the law applicable thereto, the findings of the master should have been that the
13 intervening petition of intervenors be dismissed.

Upon the facts as found by the master and the law applicable thereto, intervenors are not entitled to the relief as prayed for.

The amount found by the master is excessive and not warranted by the testimony and for other good and sufficient reasons.

G. B. BURNETT,
Attorney for Receivers.

(Endorsed:) Filed Oct. 22, 1888. Wm. H. Bradley, clerk.

14 Afterward, to wit, on the 23d day of October, 1888, came E. B. Sherman, one of the masters in chancery of said court, and filed in said clerk's office his report in said entitled cause; which said report is in the words and figures following, to wit:

Report.

In the Circuit Court of the United States for the Northern District of Illinois. In Chancery.

CENTRAL TRUST COMPANY OF NEW YORK
ads.
WABASH, ST. LOUIS & PACIFIC RAILWAY COMPANY.

In the matter of the intervening petition of Perry Brothers.

To the honorable the judges of said court:

The undersigned, master in chancery of said court, to whom, by an order entered therein on the 30th day of June, 1886, was referred the above-entitled cause, directing said master to take evidence therein

and report the same to the court, with his findings in the premises, respectfully reports—

15 That said cause was set down for hearing, for the purposes in said order of reference specified, on the 24th day of September, 1886; that there appeared for the intervening peti-oners Mr. F. C. Hale and Mr. R. S. Tuthill, and for Solon Humphreys and Thomas E. Tutt, receivers, Mr. G. B. Burnett; that testimony was taken on that day and from time to time thereafter on behalf of said intervening petitioners and of said receivers, as appears by the record thereof; that said testimony, together with the exhibits offered in evidence by the respective parties, is made a part hereof and herewith returned into court; that, having carefully examined said evidence and heard arguments of counsel, the master finds as follows:

Findings of Fact.

I.

That the intervening petitioners, John H. Perry, Arthur J. Perry, James H. Perry, and Frank A. Perry, were, on and before the 30th day of January, 1885, doing business in Chicago as wholesale dealers and jobbers in jewelry and watches under the firm name and style of Perry Brothers.

II.

16 That on the 30th day of January, 1885, said Arthur J. Perry, who was then travelling for said firm and engaged in the business of jobbing jewelry and watches from place to place in the State of Illinois, was at the city of Springfield, in said State of Illinois, and then and there purchased of the agent and at the station or depot of the Wabash, St. Louis & Pacific railway, then under the control of said receivers, a ticket for his passage from Springfield, Illinois, to Petersburg, Illinois, over and upon said road of said railway company; that, having purchased such ticket, he presented to the station agent of the said railway company a trunk containing jewelry, watches, and merchandise belonging to said firm, such as was necessary for him in the prosecution of the business aforesaid and such as is commonly carried by persons travelling from place to place and engaged in the business of jobbing watches and jewelry; that this trunk of jewelry weighed 250 pounds; that the station agent weighed and checked said trunk and charged 25 cents for the 100 pounds overweight, 150 pounds of baggage only being allowed to each passenger; that this trunk was a heavy, dark, iron-bound trunk, of small size, as is commonly used by jobbers of jewelry and watches, and known as a jewelers' trunk; that the station agent at Springfield, when said trunk was presented to be checked, made no inquiries of said Arthur

17 J. Perry as to what the said trunk contained or whether the same contained jewelry; that no representations were made by said Perry as to the contents thereof; that about 5.30 o'clock in the afternoon the regular train of the said railway company run-

ning west over said road and through Springfield and Petersburg arrived at Springfield; that said train consisted of a locomotive, a combination car, one first-class and one second-class car; that one end of said combination car was used for transporting matter sent by express, the other end for the transportation of the baggage of passengers of the said railway company, while the middle was used as a railway mail car; that in the middle compartment, or that used by the railway mail service, was contained an old-fashioned cannon stove, cracked and imperfectly fastened to the car, with a door that rested on hinges, without a latch or catch; that there was nothing to prevent it from falling open if jolted or shaken, and it did so of its own accord; that it was in a very dilapidated and unsafe condition; that frequent complaints has been made of the unsafe condition of said stove by the clerk of the railway mail service
18 running over the road, especially when the car was repaired in the shops in 1884; that the agent of the railway company placed said trunk in the baggage compartment of the said combination car, and that said Arthur J. Perry entered the first-class car, and that said train left Springfield for the West immediately thereafter.

III.

That a little after half past 6 o'clock in the evening, and when it was about a mile and a half beyond Tice and about two miles from Petersburg and while passing around a curve, the train ran off the track, the locomotive broke loose, and all the cars constituting the train were turned over upon their sides; that the stove in the mail compartment of said combination car was broken in pieces by the shock when the car was thrown from the track and rolled upon its side, and the fire that was burning in the said stove was communicated to the contents of the mail car and almost immediately to the other compartments in said combination car; that the trunk of the said Perry contained in the baggage compartment was burned and the contents thereof wholly destroyed, except a small salvage from the wreck and fire, which was made by the said Perry; that
19 the said Perry, as soon as he was able to escape from the passenger car, which had been overturned and rolled into the ditch, proceeded to the baggage car to ascertain the condition of his trunk, but was unable to rescue it from the flames until after it had been nearly destroyed as aforesaid.

IV.

That the said accident to the said train was caused by the spreading of the rails upon which the same ran, and that such spreading was due to the defective, decayed, and worthless ties upon which, in part, the rails were laid; that the railroad at this point was in an unsafe condition; that this unsafe condition of the road was of such a character and so long continued that it must be presumed to have been known to the officers of the road and to the receivers thereof.

V.

That it was the custom of the trade, among wholesale jewelers and jobbers in jewelry and watches, not only in the west but through the central and eastern portions of the United States, and had been for 15 or 20 years prior to the time of this accident, to sell jewelry to retail dealers throughout the country by selecting an assort-
20 ment of *of* goods, such as would ordinarily be required by the retail trade, and packing them in a jewelers' trunk and travelling from place to place and making sales of the goods, not from samples but by selling and delivering from the stock contained in the trunk; that about three-fourths of the entire jewelry sold by jobbers to the retail trade through the country was sold in that manner; that the large wholesale jewelry firms in Chicago had for years carried on their business in that manner, and that this was so generally done that it must be presumed that not only the agents of the railroads but the officials thereof were cognizant of this custom of the trade; that in carrying on the trade in this manner trunks filled with jewelry for the purpose aforesaid have been commonly received by the agents of the railroads as baggage and checked as such; that while this was doubtless done without any inquiry on the part of the agents of the railroads or any declaration on the part of the travelling men who presented the same, yet that the business had been transacted in this manner so generally and for so long a time and the kind of trunks commonly used by such travelling men was so well known to those accustomed to
21 handling baggage that those familiar with receiving and checking baggage must be presumed to have been aware of the contents of such trunks; that station agents and baggagemen were undoubtedly sufficiently familiar therewith to know that they did not contain the ordinary wearing apparel and baggage of persons engaged in ordinary traveling and to be put upon inquiry as to their contents, if it was their duty so to inquire.

VI.

That the trunk containing the jewelry which was destroyed in manner aforesaid was a very small, heavy, iron-bound trunk, one well known in the trade as a jewelers' trunk, and was constructed differently from trunks used by travelers for transporting ordinary baggage, and was so constructed that any person accustomed to receiving and checking and handling trunks of commercial travellers must have been aware that it did not contain the ordinary wearing apparel and baggage of an ordinary traveller; that its construction and character and the fact that it weighed 250 pounds and required the payment of 25 cents extra on account of its excessive weight were circumstances which could not fail to attract the atten-
22 tion of the agent who received and checked the said trunk and to put him upon inquiry as to the nature of its contents if it was his duty to make such inquiry.

VII.

That the stove in the middle compartment of the combination car, and from which the fire was communicated which consumed and destroyed the property in question, was in a notoriously dilapidated and unsafe condition, and that this fact was well known to those in charge of the trains running over this road; that on other roads, and notably upon the cars of the Northwestern Railway Company, there are and have been for some years in use stoves which, by the application of proper appliances and safeguards, are rendered comparatively safe in case of an accident of this character.

VIII.

That the goods contained in said trunk, when the same were packed and the said Arthur J. Perry left Chicago upon the trip aforesaid, had cost the intervening petitioners, as per the bills
23 of the manufacturers from whom the same had been bought, the sum of $8,139.92; that this, however, did not represent the entire cost of the goods, since to the said costs, as shown by the bills of the manufacturers of said goods, there should be added the value of the time, skill, and expense required in making such purchases, the cost of insurance, and the like, and also the value of the time and skill required to select from the stock this particular lot of goods and pack the same ready for transportation; that it does not definitely appear, however, by the evidence what was the actual additional cost aforesaid; that the trunk and its furniture was worth the sum of $87.50; that the said Arthur J. Perry had sold after his departure from Chicago and before the destruction thereof goods from the said trunk amounting to $408.88 at the gross selling price thereof; that it does not definitely appear at what profit above the cost thereof the said goods were sold, but the master estimates, as well as he is able from the evidence, that the same were sold at an advance of 15 per cent. upon the manufacturers' price- thereof; that the goods sold at the net manufacturers' prices thereof would on that basis represent a valuation of
24 $347.55, and that the goods which were contained in the trunk at the time of the disaster represented, at the net manufacturers' prices thereof, the sum of $7,792.31; that the salvage by intervening petitioners from the debris of the trunk, as shown by the evidence, was $612.00; that just before the time the said Arthur J. Perry started upon his trip an inventory of this property had been made by the intervening petitioners; that this inventory was made upon the basis of the value of said property at that time to the intervening petitioners, estimating the same at jobbers' prices—that is, at the market prices at which property of this character was sold by jobbers to the trade; that the profit to the wholesale dealer and jobber upon goods of that character at that time was from 10 to 30 per cent., depending upon the style and quality of the goods; that the value of said goods, as per such inventory, was $9,818.46, including the trunk and its furniture.

IX.

That there was and for some time previous to the accident had been no bucket in said compartment car; that as soon as the
25 clerk of the railway mail service was able to do so he called for a bucket and for assistance, in order that he might extinguish the fire, but having no bucket threw some snow thereon, but was unable to extinguish it in that manner; that when the car was derailed it was thrown very near to a small pond of water or creek; that had the clerk of the railway mail service been able to find a bucket he could easily have extinguished the fire before it gained much headway and before the property of the intervening petitioners had been destroyed or injured by the fire.

X.

That the branch of the Wabash system upon which this accident occurred, known as the Springfield & Northwestern, and running from Springfield to Havana, in a road over which comparatively few trains are run and over which there is a small amount of passenger travel and a comparatively small amount of freight business is done; that the road at and near the place where this accident occurred was at the time of such accident in a condition as good as when the receivers took possession thereof; that some repairs had been made thereon by the receivers; that notwithstanding
26 this the road, as before stated, was in an unsafe and dangerous condition, and the accident was directly attributable to that fact.

XI.

Contention of Intervening Peti-oners.

It is contended on the part of the intervening petitioners that the railroad company, and hence the receivers thereof, is liable—

(1.) As a common carrier; that as such it guaranteed to deliver safely at its destination the trunk containing the property of the intervening petitioners; that this liability arises from the fact of the purchase of the ticket by Arthur J. Perry, the payment of the 25 cents extra for the transportation of the excess weight of his baggage, the peculiar construction of the trunk containing the property, which it is insisted was notice to the agent at Springfield who checked the baggage that the trunk did not contain ordinary wearing apparel and personal effects, but did probably contain a stock of jewelry; the general custom on the part of wholesale dealers
27 and jobbers in jewelry for many years previous to this time of packing goods of this character in trunks of this description and offering them as baggage to be transported from place to place for the purpose of selling the same to the trade, the long-established custom of railroads to receive such trunks and check the same as baggage, and the other peculiar circumstances of this case.

(2.) That if not liable as a common carrier the railroad company

is still liable as a bailee for hire; that it received extra compensation for the transportation of this baggage; that the destruction of the property of intervening petitioners was the direct result of the negligence of the railroad company in not keeping its track in proper repair, in placing in the compartment car in which the fire originated and which contained the property aforesaid a stove of such a character and in such a condition that any accident would almost necessarily cause the fire to be communicated to the baggage compartment containing the property of intervening petitioners, and especially since the stove had been in this condition for a long time and the attention of the proper officers of the company had
28 been frequently called thereto; in the want of any *of any* bucket in the compartment car by means of which the fire might have been extinguished, and in the entire neglect of the servants and employés of the railroad company to make any attempt or effort to extinguish the fire, although water was close at hand and the fire could have been easily extinguished before the same had made any considerable headway.

XII.

Contention of Receivers.

It is contended on the part of the receivers of the railroad company—

(1.) That there is no liability to the intervening petitioners because Arthur J. Perry offered his trunk to the agent of the company to be checked as ordinary baggage and concealed from the agent of the company who checked the same the fact that it contained a large and valuable stock of jewelry and watches, which fact he was bound to disclose before the company was liable, and the concealment of which was a fraud upon the company and relieved
29 it from any liability for the destruction of the property of the intervening peti-oners; that all the testimony tending to show the custom of jewelers to transport their baggage in this manner and the custom of the railroad company to receive and *to receive and* transport the same as ordinary baggage is incompetent, and that, even if such proof were competent, this custom, if proved, does not render the company or its receivers liable in this particular instance.

(2.) That if there is any liability as bailee it is only a liability for gross negligence; that the receivers have not been guilty of gross negligence; that this railroad is a spur or branch of the Wabash system, upon which comparatively little business was done and over which there was comparatively little travel and from which there was a small income; that the receivers kept the same in as good condition as under the circumstances they were required to do; that the failure to extinguish or attempt to extinguish the fire might have been due to the fact that Arthur J. Perry had concealed from the agent and employees of the company the fact that his trunk

contained goods of so great value; that it is the universal
30 custom of railroads to transport free only personal baggage and effects; that this custom was well known to the said Arthur J. Perry; that when a trunk, no matter what its size or character or what it is ordinarily used for, is presented to the agent of the railroad company to check, such agent is not put upon inquiry as to the nature or character of the contents thereof; that it is the duty of the person offering such trunk as baggage to disclose the character of its contents if other than personal baggage in order to make the railroad company liable for the loss or destruction thereof.

Findings of Law.

I.

The facts in this case present questions which have not been fully and satisfactorily adjudicated in any case to which the master has been referred. The law seems well settled that where a passenger upon a railroad presents to a baggage agent to be checked an ordinary trunk which contains jewelry and watches, or other like valuable property, which fact is not disclosed to the agent and of which he has no knowledge, and obtains a check therefor, it
31 is a fraud upon the railroad company and not only relieves it from its liability as an insurer of the goods as a common carrier, but also from the obligation to exercise that ordinary and reasonable care which the law imposes upon a bailee for hire, and makes the railroad company a gratuitous bailee, obligated only to slight care and answerable only for gross negligence. In such a case the passenger, by implication, represents to the company that the trunk which he presents contains ordinary wearing apparel and baggage, and that it does not contain a valuable stock of jewelry.

On the other hand, the law seems equally well settled by the weight of authorities that where a passenger presents to a baggage agent, to be checked, a trunk, and informs such agent that it contains valuable goods other than ordinary wearing apparel and baggage, or if the agent has actual knowledge of its contents, the *the* railroad company is bound by the act of its agent and becomes liable as a common carrier.

There are some authorities also which seem to hold that if the agent of the railroad company knew that persons, like the passenger, were in the habit of packing valuable articles, other than
32 ordinary baggage, in boxes or trunks of a peculiar character, so that from such knowledge they might reasonably infer that such trunk contained or might contain such valuable articles, then it becomes the duty of the agent of the railroad company to inquire as to the nature of the contents of such trunk, and that if he did not the company is charged with the duty of exercising ordinary care in the transportation of such trunk, and is liable for loss or damage caused by negligence.

On the other hand, in the case of Alling *vs.* Boston & Albany Railroad, 126 Mass., 121, the supreme court of Massachusetts holds

that where the purchaser of a ticket presents a trunk to be checked he represents it to contain personal baggage; that in a case where the trunk is of special construction and is well known as a commercial traveler's trunk, and which, therefore, an agent may suspect, from its appearance, contains merchandise, it is not competent to prove that a large part of the business of a railroad consists in transporting commercial travelers with such trunks, and that in the course of such business such travelers purchase tickets for the ordinary passenger trains and receive checks for their said trunks; that the carrier or its agent is not put on inquiry as to the con-
33 tents of such a trunk, but may safely rely upon the implied representation of the traveller that it contains only personal baggage, even although doubting its truth or knowing its untruth, and that the carrier would be liable only for gross negligence or fraud. Still other cases seem to hold that where a carrier receives extra compensation for transporting a trunk it becomes liable as a bailee for hire irrespective of whether the property charged for and checked is or is not personal baggage; that the simple fact of payment and receipt of a sum because of extra weight of baggage changes the nature of the liability of the railroad.

II.

The claim by counsel for intervening petitioners that by reason of the payment by Mr. Perry to the station agent of the regular charge for transporting excess baggage the liability of the railroad company was changed or a new liability created, in the judgment of the master, is not well founded. The mere fact of the payment by a passenger of the usual charge for overweight of personal baggage cannot on principle change or affect the liability of the common carrier. Railroads ordinarily carry for a single fare a
34 passenger and a fixed amount of personal baggage, and where the personal baggage is in excess of such an amount an extra charge is made therefor. If the passenger makes no disclosure as to the nature of the contents of his trunk and there is no knowledge on the part of the baggage agent, upon what principal of law should the mere payment of the fixed charge for such excess increase the liability of the carrier?

When a passenger presents an ordinary trunk to be checked he tacitly represents that it contains ordinary personal baggage, and he does this not less when the trunk weighs 200 pounds than when it weighs 100 pounds. The case of The Michigan Central Railroad Co. *v.* Cannon, 73 Ill., 248, and other cases which seem to hold otherwise are not well considered and cannot be sustained on principle.

The only possible significance which the overweight of a trunk and the payment therefor can have is that it may be a circumstance which should be considered in connection with others in arriving at the exact nature of the transaction between the parties and the consequent liability of the company.

III.

35 The master is of the opinion that in this case it was competent for the intervening petitioners to introduce evidence tending to show a general custom of jewelers to transport their stock for the jobbing trade, as was done by the intervening petitioners in this case, and the general custom of railroads to receive and check the same as personal baggage, as was done in this case. The supreme court of Massachusetts, in the Alling case, decided that the plaintiff's offer to show "that a large part of the defendant's business consisted in transporting a large class of passengers known as commercial travellers, with trunks like this, containing merchandise of great value, and that these trunks are known as sample or merchandise trunks and are of special construction, and in the course of that business the commercial travelers purchase tickets for the ordinary passenger trains and receive checks for their said trunks, and the defendant undertakes to transport the traveler and trunk accordingly for the price of the ticket," was incompetent, and that the court below properly rejected such evidence; that had the offer of proof gone far enough to show either a special agreement with the passenger or a general agreement that commercial travelers might carry merchandise upon passenger trains at its risk, the company might be liable.

36 The plaintiff in this case, it is true, offered to prove certain facts, but not a general custom as such. Proof of a general custom touching the very matter at issue seems to the master to be clearly competent, and, as a general custom may modify a statute or a rule of common law, it is not perceived why it may not also modify the ordinary implied contract between a carrier and a passenger or the implied representation of a passenger as to the contents of a trunk, out of which the contract itself arises.

IV.

In this case it clearly appears from the evidence that for nearly 20 years the wholesale dealers and jobbers in jewelry not only in Chicago, but in other principal cities of this country, had carried on the greater part of this trade by doing precisely what intervening petitioners did in this case, namely, to pack a stock of jewelry in a trunk constructed for that purpose and travelling from place to place and disposing thereof; that in so doing it has also been the custom to present such trunks to the baggage agents of the several railroads and have them checked as ordinary baggage; that this had been done for so long a time and to so great an extent that it must be presumed, in the absence of proof to the contrary,

37 that baggage agents and others accustomed to the handling of baggage and familiar with those traveling salesmen who were engaged in this business must have been aware of the fact that they were constantly checking as baggage trunks which contained stocks of jewelry which were being transferred from place to place for the purpose aforesaid; that this had been done so long and so generally that the officers of this and other railroads must be pre-

sumed, in the absence of proof to the contrary, to be cognizant of the custom and to have tacitly assented thereto; that while the evidence in this case shows that the station agent at Springfield who checked this trunk did not know Mr. Perry and did not have actual knowledge of the contents of this trunk, still no evidence is introduced on the part of the receivers showing or tending to show that this custom was not general and well known to the officers of this and — railroads and to those accustomed to handle and check baggage over the railways and was not well known even to this agent.

If, as counsel for the receivers insist, evidence of this general custom is wholly incompetent and does not and can in no manner change or modify the relations of the parties or the nature of the contract between the parties, it was wholly unnecessary to
38 contradict the evidence as to the existence and extent of such custom or to show that the officers or employés of this road were ignorant thereof. The agent who checked this trunk himself testified that he would know from the peculiar construction and character of this trunk that it did not contain ordinary baggage.

He further testified that he knew as a matter of fact that at the time of this accident and up to about one year before testifying, and long after the loss in question, when a new rule was adopted, that jewelry firms transported their stock of jewelry in trunks of that kind, and that these trunks passed over the railroad daily checked as ordinary baggage. It seems well settled that when a passenger presents an ordinary trunk to a baggage agent or station agent to be checked, and there being no peculiar circumstances to create suspicion on the part of the baggage agent, he is not bound to inquire as to the contents of the trunk, but can safely rely upon the implied representation of the passenger that it contains ordinary baggage.

But in this case one of the intervening petitioners, according to the general custom which had been p-evalent for many years, packed a stock of jewelry and watches in a jewelers' trunk
39 well known to the baggage agents as such, the contents of such trunk, although small in size, weighing 250 pounds, and started out to travel and sell the same in the usual way, and in the course of the trip, finding himself at Springfield and desiring to go to Petersburg over the railroad in charge of said receivers, purchased a ticket for Petersburg, and presented to the baggage agent, at Springfield, this jewelers' trunk weighing 250 pounds, to be checked as ordinary baggage, according to the custom that had been prevalent among travelers of this character and as had usually been done by baggage agents on this road.

The baggage agent, observing the trunk to be overweight, weighed the same, fixed the amount of excess baggage at 100 pounds, charged and received the usual compensation for transportation of extra baggage between the points named, checked the trunk, and delivered the check to Mr. Perry. The baggage agent, being called to the stand, stated that he did not know Mr. Perry, nor had he any knowledge that the trunk contained jewelry, but admitted, how-

ever, that he knew from the peculiar construction of the trunk that it did not contain ordinary baggage, but said similar trunks were used by those engaged in the hardware and in the paper business.

40 It is clear from the evidence that Mr. Perry did not disclose the character of the contents of the trunk, nor did he say anything in regard thereto, but simply presented the trunk, as had been customary with him and other salesmen, to be received and checked as ordinary baggage, as it had been customary for agents to do on this and other roads.

Under the peculiar circumstances of this case, was it the duty of Mr. Perry, acting in good faith, to disclose to the baggage agent the nature of the contents of the trunk, or was the baggage agent, upon seeing the trunk of this peculiar formation, and being familiar with the uses to which such trunks were applied, and being well aware that it did not contain ordinary baggage, and being familiar with the fact that jewelers had been in the habit for many years of carrying their stocks in such trunks, having them checked and transported over the road as ordinary baggage, put upon inquiry as to what the trunk actually contained? If the former, then, clearly, the receivers are not liable as common carriers. If the latter, then they are clearly liable, if not as common carriers, at least as bailees for hire, and bound to exercise such diligence and care as a

41 reasonable and prudent man would exercise as to his own property. The master finds this question one of considerable difficulty. It seems clear, from the evidence, that Mr. Perry was not guilty of any intentional fraud upon the railroad company; that he understood and acted upon the understanding that by tacit consent, at least, and in accordance with the long-continued custom, he was fairly entitled to have his stock of goods transported as ordinary baggage; that this was in the nature of a concession on the part of the railroads of the country to wholesale merchants and jobbers engaged in this kind of business. It is also a significant fact that no station agent or other person connected with the handling of baggage upon this or any other railway was put on the stand to deny either the existence of this custom among wholesale dealers and jobbers in jewelry or the knowledge of baggage agents of such a custom of checking such goods as baggage. The truth seems to be that by the tacit consent upon the part of those managing railways or those handling baggage of passengers thereon this method of transporting jewelry has become common, and that those handling baggage upon railroads were well aware of such fact, although it was

42 not customary for traveling men to make any actual statement as to the contents of their trunks or the value thereof.

V.

After mature deliberation the master has arrived at the conclusion that under the peculiar circumstances of this case, the baggage agent at Springfield having been aware that the trunk did not contain personal baggage, but did contain jewelry, hardware, or paper stock, and that it not improbably contained a stock of jewelry, and

having checked it, however, as personal baggage, in accordance with the usual custom, which was so well known and of such long standing as to be equivalent to a tacit consent, at least, on the part of the officers of the railroad that this should be done, the agent was, at least, put upon inquiry as to what were the actual contents of the trunk in question, and that, having observed the same, its character and weight, and having checked the same without objection or without any inquiry whatever as to what its contents were, the receivers cannot be permitted, in a court of equity, to say that they relied upon the implied representations of Mr. Perry that it
43 contained only personal baggage, especially as the proofs show that this general custom of checking jewelry had obtained on this and other railroads throughout the country for many years.

VI.

The master is aware that this conclusion is not in accordance with the opinion of the supreme court of Massachusetts in the case of Alling *v.* The B. & O. Railroad Company, *supra*, but in the judgment of the master the true rule applicable to such cases is not announced in this case. If the common carrier or its authorized agent knows that it is receiving a trunk containing certain valuable goods, and is not receiving ordinary personal baggage, and with such knowledge deliberately accepts and checks the trunk, can it fairly be said that it may rely upon the implied representation of the passenger that the trunk contains only personal baggage, when the agent has actual knowledge that it contains nothing of the kind but something entirely different and more valuable? Is the mere silence of the passenger under such circumstances such a fraud upon the company as will relieve it of all liability as a carrier or bailee for hire? Can one be defrauded by implied representations
44 when he has actual knowledge as to the exact facts? Can he rely upon an implied representation when he had explicit knowledge to the contrary and thus escape liability on the ground that he is defrauded or deceived? Such a doctrine is scarcely consonant with the principles of equity or fair dealing and the duties, obligations, and liabilities of a common carrier.

It seems to the master that the true rule is this: that when the railroad company, by its authorized agent, checks a trunk with knowledge on the part of its agent that it is not personal baggage, but is a stock of jewelry or other valuable merchandise, it is liable, in the case of loss or injury, if not as a common carrier, at least as a bailee for hire; that where the agent, receiving and checking a trunk, is satisfied by its appearance, weight, and other indications that it does not contain personal baggage, but does contain goods or merchandise, and may probably contain valuable jewelry, the company is bound by the knowledge of its accredited agent, to whom it entrusts the business of receiving and checking baggage,
45 and is fairly put upon inquiry as to the nature and value of the contents of the trunk so received and checked.

This seems to be in accordance with the principles enunciated by Judge Drummond in the case of Kuter *v.* Michigan Central Rail-

road Company, 6 Bissell, 35. If this view of the law be correct it was the duty of the agent at Springfield, knowing the trunk did not contain personal baggage, to have made inquiry of Mr. Perry as to its contents, and failing to do so the company is liable, not only for gross negligence, but for want of the exercise of reasonable and ordinary care. The master arrives at this conclusion with some hesitation, but from a careful examination of the authorities cited and the principles underlying this question he is -able to arrive at any other.

VII.

In the judgment of the master there can be no reasonable doubt that the loss of the intervening petitioners' property was occasioned by the negligence of the receivers in failing to keep the road in proper repair and in putting the trunk in question in one compartment of a car, another compartment of which was used as a postal car, wherein was and for a long time had been to the knowl-
46 edge of the company contained a dilapidated and broken stove, which, in case of an accident like that in question, could scarcely fail to set fire to the inflam-able material contained in this postal compartment and which in turn would naturally communicate the fire to the baggage compartment and injure or destroy its contents, and in also failing to extinguish the fire after the accident, as might easily have been done by the employees of the road present at the time.

VIII.

If the master is correct in his view of the law and the facts it follows that the receivers are liable for the value of the goods at the time of their almost entire destruction less the value of the salvage.

The master finds it somewhat difficult to ascertain the exact value of the goods destroyed. As has been already stated, intervening petitioners presented an inventory of the property injured at the regular jobbing or selling prices thereof, which inventory amounted to $9,818.46. The value as set forth in such inventory includes the sums paid the manufacturers for the goods, the cost of purchase
47 and expense of transportation, and the ordinary profit made by jobbers by the sale of their goods.

It is clear that the selling price of these goods, then unsold, and to sell and collect the proceeds of which would require considerable time and expense, cannot be the true value of the goods for the purpose of fixing the liability of the receivers in this case. The expected profit, not arising from a specific contract, but from anticipated sales, and which was included in the estimate as stated by intervening petitioners, was stated to be from 5 per cent. to 30 per cent.; but there seems to be no means of ascertaining from the evidence what definite part of the inventory price was expected profit nor how much expense and time would be necessary to sell the goods in the ordinary way, and therefore the master is unable to fix the value of the goods at the time of their loss from the schedule price thereof.

It further appears from the evidence that the net cost of the goods contained in the trunk, as per bills from the manufacturers thereof, who sold the same to intervening petitioners, was $8,139.92—that is, the firm paid the manufacturers that sum, and the actual cost of the goods was that sum, increased by the expense in-
48 curred and the value of the time employed in the purchase of the goods. The proofs do not show an appreciation or depreciation in the value of the goods after their purchase.

The intervening petitioners, however, are unable to make any definite estimate of the cost of replacing these goods, so that the master is unable to ascertain definitely what ought to be added to the purchase price in order to ascertain the actual cost of the goods to intervening petitioners at the time they were selected and packed in this trunk. In the absence of such definite proofs the master can only find that the jewelry contained in the trunk when Mr. Perry started upon his tour was worth the sum paid therefor to the manufacturers, namely, $8,139.92; that the trunk and its furniture *was* worth the further sum of $87.50, making the total value of the trunk and its contents $8,247.42. From this sum should be deducted the value of the jewelry sold by Mr. Perry before the accident, which, at jobbers' prices, was $408.88. Deduct from such jobbers' prices, say, 15 per cent. or $61.33 profit, and the value of the goods sold by Mr. Perry is found to be $347.55. This amount added to the value
49 of the salvage, $612.00, makes $959.55, which amount deducted from $8,247.42 leaves $7,287.87, which the master finds to be the value of the property destroyed by reason of the negligence of the receivers, and which amount intervening petitioners are entitled to recover. For clearness the master tabulates as follows:

Manufacturers' bills for jewelry		$8,139 92
Value of trunk, &c.		87 50
Total value		8,227 42
Deduct value of goods sold	$347 55	
Deduct proceeds salvage	612 00	
		959 55
Total loss		$7,287 87

The master therefore finds that the intervening petitioners are entitled to recover from the receivers the said sum of $7,287.87 and costs.

Respectfully submitted.

Chicago, October 19th, 1889.

E. B. SHERMAN,
Master in Chancery of said Court.

Endorsed: Filed the 23d day of October, 1888. Wm. H. Bradley, clerk.

50 Afterward, to wit, on the eighteenth day of March, in the adjourned March term of said court, 1889, in the record of

the proceedings thereof in said entitled cause, before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

Order.

WABASH, ST. LOUIS AND PACIFIC RAILWAY COMPANY *et al.*
vs.
CENTRAL TRUST COMPANY OF NEW YORK *et al.*
} In Chancery.

Now come the parties by their solicitors, Richard S. Tuthill for Perry Brothers, and Mr. Burnett for the receivers herein, and now comes on to be heard the intervening petition of said Perry Brothers, and after hearing the arguments of counsel the court takes the same under advisement.

51 Afterward, to wit, on the twenty-third day of July, 1889, there was filed in said clerk's office the opinion of Judge Gresham in said entitled cause; which said opinion is in the words and figures following, to wit:

Opinion.

In the Circuit Court of the United States for the Northern District of Illinois.

CENTRAL TRUST COMPANY OF NEW YORK
ats.
WABASH, ST. LOUIS & PACIFIC RAILWAY and Others.

JULY 23, 1889.

In the matter of the intervening petition of Perry Brothers.

GRESHAM, *J.:*

The intervenors, Perry Brothers, are jobbers of jewelry and watches at Chicago. One of the firm, Arthur J. Perry, was at Springfield, Illinois, with a trunk containing a stock of jewelry and watches, and desiring to go to Petersburgh, in the same State, bought a ticket for passage over one of the lines of the Wabash railway, then in possession of Humphreys and Tutt as receivers. The station agent, who had served as such at the same place for more than eleven years, checked the trunk, which weighed 250 lbs., to Petersburgh as ordinary personal baggage, charging twenty-five
52 cents for overweight, 150 lbs. being the amount allowed to a passenger. The nature and contents of the trunk were not expressly disclosed to the agent and he made no inquiries upon that subject. The trunk was three feet by two and a half, iron-bound, weighed 250 pounds, and known in the trade and to baggage men as a jewelers' or commercial travelers' trunk.

The evidence shows that the intervenors and other merchants of the same class then and prior thereto sold their goods, in the main, directly from trunks transported from place to place over railroads,

and that this road had previously and frequently checked and carried such trunks for the intervenors and others as personal baggage, but that the receivers no longer permitted such carriage.

The train was wrecked before it reached Petersburgh and the trunk and its contents were destroyed by fire. The accident was caused by a defective road-bed and rotten ties. The master to whom the case was referred reported that the trunk and its contents, watches and jewelry, were worth $8,227.42, for which amount he recommended an allowance, less $612, the value of the goods rescued from the wreck.

If the station agent did not know that the trunk contained jewelry he had reason to believe it did. He received it knowing that Perry was not entitled to have it carried as personal baggage. The agent did not believe the trunk contained wearing apparel
53 only. It is plain from the evidence that he recognized it as a jewelers' trunk, and that he understood it contained a stock of jewelry. He was not, therefore, deceived and the receivers were not defrauded. Having checked the trunk by their agent as personal baggage, knowing or having reason to believe that it contained jewelry, the receivers became bound to safely transport it to its destination, which they did not do, and they are liable for the damages that resulted from a breach of the contract. They sustained to the trunk and contents the relation of a carrier, and they are liable for the property destroyed by their negligence just as if the trunk had contained nothing but wearing apparel or as if they had undertaken to carry it as freight.

The exceptions to the master's verbose report are overruled and a decree will be entered in favor of the intervenors for the amount found due them.

R. S. Tuthill and F. C. Hale, for intervenors; G. B. Burnett, for receivers.

(Endorsed:) Filed July 23, 1889. Wm. H. Bradley, clerk.

54 Afterward, to wit, on the twenty-ninth day of July, in the July term of said court, 1889, in the record of the proceedings thereof in said entitled cause, before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

Decree.

WABASH, ST. LOUIS AND PACIFIC RAILWAY COMPANY
vs.
CENTRAL TRUST COMPANY OF NEW YORK *et al.* } In Chancery.

In matter of the intervening petition of John H. Perry, Arthur J. Perry, James K. Perry, and Frank A. Perry, partners under the name and style of Perry Brothers.

This cause coming on to be heard at this term upon the report of the master in chancery of this court heretofore filed herein and the

exceptions thereto filed by Solon Humphreys and Thomas E. Tutt, receivers of the said Wabash, St. Louis and Pacific Railway Company, and being argued by counsel for the respective parties, and the court having duly considered the same, it is ordered, adjudged, and decreed that the said exceptions be, and the same are hereby, overruled; and it is further ordered, adjudged, and decreed that the said report of said master stand confirmed; and the court doth find that there is now due said petitioners, Perry Brothers, from said receivers the sum of seven thousand two hundred and
55 eighty-seven dollars and eighty-seven cents ($7,287.87), as found by said master's report.

And the court hereby orders, adjudges, and decrees that said receivers, Solon Humphreys and Thomas E. Tutt, pay said sum last aforesaid to said petitioners within ten (10) days from the entry of this decree, with interest thereon, at the rate of six per cent. per annum, from this date, and that said receivers also pay the costs of this proceeding to be taxed, including the master's fees, which are by the court allowed at the sum of one hundred and fifty dollars.

56 *Testimony.*

In the Circuit Court of the United States for the Northern District of Illinois.

CENTRAL TRUST COMPANY OF NEW YORK
vs.
WABASH, ST. LOUIS & PACIFIC RAILWAY COMPANY. } In Chancery.

In the matter of the intervening petition of Perry Brothers.

Testimony in behalf of petitioners and of defendants, taken pursuant to an order of reference in said cause before Elijah B. Sherman, a master in chancery of said court, commencing on the 24th day of September, 1886, and continuing from time to time, as hereinafter noted.

57 SEPTEMBER 24TH, 1886.

Present: F. C. Hale and R. S. Tuthill, for intervening petitioners, and G. B. Burnett, Esq., for receivers.

ARTHUR J. PERRY, being first duly sworn, testified on behalf of petitioners as follows:

By Mr. HALE: You are one of the intervening petitioners, are you?

A. Yes, sir.

Q. Reside in Chicago?

A. Yes, sir.

Q. What is your business?

A. Jewelry business.

Q. How were you employed in the month of January, 1885?

A. I was one of the firm of Perry Brothers. I was traveling at the time.

Q. You say you were in the jewelry business?
A. Yes, sir.
Q. Wholesale and retail?
A. Wholesale jewelry and retail.
Q. In Chicago?
A. Yes, sir.
Q. State what occurred on January 30th, 1885, where you were, and where you were going.
A. I was in Springfield, on my regular trip, going to Petersburg; went down to the Wabash depot with my case of jewelry—trunk of jewelry—bought a ticket and checked the trunk to Petersburg, paying 25 cents excess for a hundred pounds overweight. We are allowed to carry 150 pounds. I paid for my trunk, which weighed 250 pounds. I took the train; when within 2 miles of Petersburg there was a bad accident and we were thrown over.

Q. What kind of a trunk was that?
58 A. It was a heavy iron trunk—iron-bound, dark trunk, small size.
Q. Had it any particular designation that you know of?
A. It is a trunk that we used in our business, is about all; very small and heavy.
Q. The kind of a trunk known as a jewelers' trunk, is it?
A. Commonly used and known as a jewelers' trunk.
Q. What time was it this accident occurred?
A. 30th of January.
Q. What hour?
A. About 6, or half past, in the evening.
Q. Left Springfield about what time?
A. About 5 o'clock; I am not positive, though.
Q. State where you were—in what part of the train.
A. The train consisted of a baggage car, locomotive, first and second class passenger—that is, a smoking car—and a ladies' car. I was in the rear car; I was in the first-class car.
Q. What occurred to that car at the time of the accident?
A. Well, it jumped along the track quite a little distance. The entire train, except the locomotive, turned over on its side.
Q. Did the locomotive remain attached to the train or not?
A. No; it broke loose and pas-ed on 20 feet or more ahead of the train, across a small bridge or culvert.
Q. Did you remain on the track—your car—or was it thrown over?
A. It was rolled over into a ditch. It turned down, didn't roll down.

Q. What did you do when your car came to a stand-still?
59 A. About the first thing I looked to find if there was any danger of fire, and found it was safe. There was a woman calling for her baby, and some gentleman said, Here is the baby, but I can't pick it up. I picked up the child.
Q. We don't care what the gentleman did—what you did.
A. I took the child to the rear end of the train and handed it to the break-man. I asked if there was any fire, and he said no.

Q. Then what did you do?

A. I went into the forward part of this car I was in, and, with the assistance of two or three others, helped a man out; I didn't know his name; they called him Sandy Burrill. We assisted him out.

Q. Helped him how?

A. Yes; I took one of his arms and helped him along the top of the car. The car was at an angle, like this (indicating).

Q. Was the conductor hurt?

A. Yes; but I don't know how bad. Blood was over his forehead and down the side of his face.

Q. You assisted him in escaping from the car; then what did you do?

A. Went back after my valise and a grip I had.

Q. In the same car you were in?

A. In this same car. I took them out. I don't know whether I helped any others or not. I think I did. I think I took a parcel for this woman.

Q. Then what did you do?

A. Crawled out of the rear end of the car and walked——

60 Q. Was there any difficulty in getting out of the front end of the car?

A. Yes; you couldn't get out of that end; the door was closed. I don't know whether it was jammed together or not; at any rate, we went out of the rear end.

Q. That seemed to be the only exit?

A. Yes, sir; the only one we knew of.

Q. You say you went around where?

A. When I got out I went to the baggage car and saw it was in flames. I heard some one say it was afire and I wanted to see if it was on fire inside.

Q. Was it dark or light at that time?

A. It was dark—that is, there was snow on the ground, but it was after nightfall.

Q. Did you make any attempt to rescue the contents of the baggage car at that time?

A. No, sir.

Q. Was it practicable to do so?

A. No, sir; couldn't have got in the car to do it; could have gone to the rear of the train, but we couldn't have gotten in.

Q. You say the baggage car was in flames at this time?

A. When I came around the forward part of the train.

Q. Was it consumed rapidly or otherwise?

A. Well, it was pretty well filled with flames and smoke when I struck it.

Q. Did you see anybody there?

A. Around the car then?

Q. Yes; any employé of the road that was around there?

61 A. I don't know exactly who I saw when I went in the forward part of the car. I saw Mr. Krampff there, the postal agent.

Q. Where did you go from there?

A. After we gathered up our traps we walked down a distance, perhaps of 300 yards, to a crossing, and some farmers came with their sleighs and took us to Petersburg.

Q. About how far is that?

A. About a mile and a half or 2 miles.

Q. Did you return to the scene of the accident?

A. I got in town between 8 and 9 o'clock, got my supper, then got Mr. Fisher and another young man to drive the sleigh, and drove back there. Mr. Fisher and I went to raking among the ashes; it was still pretty hot then. We found where the trunk was lying and threw snow over it—what remained of it—and cooled it off and gathered up the rubbish and took it in town that night.

Q. What do you mean by the rubbish?

A. What was left of the jewelry stock—what was left of the jewelry trunk.

Q. You and Mr. Fisher took that to Petersburg that night?

A. Yes, sir.

Q. Did you make any examination of the track at the scene of this accident?

A. Nothing particular. I just saw the rails were torn up, but I didn't examine them to know whether they were broken,

Q. You couldn't tell what was the cause of this accident?

A. No; I didn't try to.

Q. Have you the check for the trunk?

62 A. We have it; yes, sir; at the office.

Q. The check given by the baggage master at Springfield?

A. Yes, sir.

Q. In your possession now?

A. Yes, sir; I haven't it here.

(Check produced and marked Exhibit A for intervening petitioner.)

Q. What are these papers (handing witness papers)?

A. It is an affidavit I made in regard to this wreck; this other is a bill I made out—a schedule of the articles or the goods contained in the trunk.

Q. And the values attached to them?

A. The values attached to them; yes, sir.

Q. Does that correctly state and show the value of the articles contained in that trunk at the time?

A. Yes, sir.

Q. The value of the articles—the articles and their value?

A. Yes, sir.

Q. How long have you been in the jewelry business?

A. I have been in the jewelry business since January, 1880.

Q. Are you familiar with the custom and way of conducting the wholesale jewelry business here?

A. I have been in the jewelry business for myself since 1882.

Q. As Perry Brothers?

A. Yes, sir.

Q. Where were you employed before that time?
A. With Matson & Company.
Q. You were there employed how long?
A. Two years.

Q. Are you acquainted with the wholesale and retail jew-
63 elry trade as conducted in Chicago?
A. Since 1880.

Q. Just state how the wholesale jewelers in Chicago conduct their business with the outlying towns with which they have trade.

(Objected to as immaterial.)

By the MASTER: He may answer subject to the objection.

A. The majority of them conduct it the same as we do—that is, they put goods in trunks and send them with men on the road.
Q. They send traveling men or members of the firm with a jewelers' stock in a trunk?
A. Yes, sir.
Q. And go to different towns and sell from that trunk?
A. Yes; sell, deliver, and bill.
Q. And, to your knowledge, that has been the custom since 1880?
A. My knowledge goes further back than that.
Q. How far beyond?
A. Since 1873.
Q. Is that their manner in conducting business now?
A. Yes, sir.
Q. Did I understand you to say you sell by samples?
A. It isn't the rule; there are a few that do it—not one in ten.
Q. They send a stock of jewelry and sell from that stock?
A. Yes, sir; they sell from the stock.
Q. And what is the usage in regard to the transportation of these jewelry trunks?

(Objected to.)

By the MASTER: It may go in for what it is worth, subject
64 to the objection.
A. We check them the same as other sample trunks.
Q. Check as baggage?
A. Yes; they allow us, as commercial baggage—they allow us 200 pounds when we have a thousand-mile ticket; when we have a local ticket they allow us 150 pounds, and we have to pay for all over that.
Q. How long did you say, to your knowledge, that has been the practice here in the West?
A. In regard to excess — baggage there has been change made by checking.
Q. They have been carried as baggage and checked as baggage since when?
A. Since 1873.
Q. Had you traveled over this road before and carried your trunk in the same manner?
A. I had.

Q. Do you know of others transacting the same kind of business?
A. Yes, sir; met them in Springfield many times, and at different points on the road; it is a common occurrence.
Q. Was it or not the common and invariable usage, so far as you know?
A. Yes, sir; that is the way the business is conducted.

The affidavit and schedule identified by the witness as containing a list of the goods in the trunk destroyed is offered as intervening petitioner's Exhibit B.

Q. Did you at the time of the date of this affidavit present this claim—this schedule of the goods so destroyed—to the company?
A. The firm presented it; I did not.
Q. Your firm?
65 A. Yes, sir.
Q. The date of the affidavit is the 25th day of February, 1885?
A. Yes, sir.
Q. In whose hands did you leave this débris or rubbish, as you call it?
A. I left it in the hands of Mr. Fisher, at Petersburg.
Q. What did he do with it?
A. He sealed it.
Q. What is his first name?
A. Charles.
Q. Sealed it in your presence?
A. No; he didn't; put the cover on the box and nailed the cover on it; he sealed it the next morning.

Cross-examination.

By Mr. BURNETT:

Q. Mr. Perry, you paid 25 cents excess baggage?
A. Yes, sir.
Q. The rule is to allow a party on a first-class ticket 150 pounds of baggage?
A. Yes; that is my understanding.
Q. And for an excess over 150 pounds the passenger pays at the rate of 25 cents a hundred?
A. For that distance, 25 cents a hundred.
Q. Regulated by distance?
A. Yes, sir.
Q. The baggage is weighed when it is presented for checking, is it?
A. As a rule.
Q. What is the distance from Springfield to Petersburg?
A. I can't tell the exact distance; about 25 miles.
66 Q. You say that was a small trunk?
A. Yes, sir.
Q. What was its color?
A. A dark trunk—a black or gray.

Q. Was it a small trunk or an ordinary size trunk?

A. It was a small trunk for the weight of it, and what sample men would call a small trunk.

Q. Was that a cold night?

A. No; it was not.

Q. Had the weather been cold preceding that time?

A. There had been cold weather the early part of January.

Q. The early — of January?

A. And there had been cold weather 6 or 7 days prior to this time.

Q. Do you know whether it was a broken rail that caused that accident?

A. No; I do not know of my own personal knowledge.

Q. Did the baggage car turn upside down or on its side?

A. It was thrown, to the best of my recollection; it stood on its top, bottom side up.

Q. Was there any other car on top of it or against it?

A. No, sir.

Q. The engine didn't go off the track?

A. Part of it was off—the tender—but it held to the grade—held to the track.

Q. Are these values that you fixed to the various articles of jewelry the price that you sell at or the cost price to you?

A. They are our jobbing price.

Q. That is what you could sell them at?

A. That was what we sell them at.

Q. What would be the difference between your jobbing price—the percentage of the cost of the jewelry to you—and the actual net cost?

67 A. That I couldn't tell you.

Q. Have you any idea?

A. Well, I haven't that I can state.

Q. Didn't you ever buy any jewelry?

A. Yes; bought lots of it.

Q. Now, can't you tell by looking over the inventory the cost price of the articles?

A. No, sir; I cannot.

Q. How do you sell your goods—what percentage over the cost price? What is the percentage of the cost price over the jobbing price?

A. It runs about 5%.

Q. Up to 500, I suppose?

A. Up to the neighborhood of 25 or 30.

Q. It makes some difference whether you sell for cash or on time?

A. Yes; a discount is made.

Q. Can't you give any idea between your jobbing price and the cost price of the articles?

A. No; I cannot.

Q. What did it cost you, in fact, to replace these articles?

A. Well, that I can't tell you.

Q. Can you approximate it?

A. No, sir.

Q. You have been in the jewelry business since 1877?

A. I could make a statement, but I couldn't make one that would be accurate. My brother might be able to do so, but I can't; that was his end of the business.

Q. You were on the road selling goods by sample in the ordinary way?

A. I was selling goods in the ordinary way.

Q. That is to say, you carried your goods and sold to the trade at the time you made the sales; at the time of taking the order

68 you made the actual sale—you delivered the goods?

A. Delivered the goods and made the bill.

Q. You were peddling?

A. We don't call it peddling; we call it jobbing.

Q. You have a store in Chicago at which you sell at wholesale?

A. Yes, sir.

Q. You and your brother?

A. Three brothers on the road.

Q. Three of you go out and carry a stock of jewelry?

A. Yes, sir.

Q. And sell it at various places as you go along?

A. Yes, sir.

Q. And deliver it as you sell it?

A. Yes, sir; deliver it as we sell it. Of course, we wouldn't refuse any outside order if there was any money in it.

Q. Did you make that inventory?

A. Yes, sir.

Q. From what did you take it?

A. From my entry book.

Q. What time did you leave Chicago to go on this trip?

A. I left Chicago—I am not positive—except my duplicates will show—I left the 21st.

Q. When you started from Chicago did you take an inventory of the stock you had in the trunk?

A. I had just taken an inventory. We had invoiced our stock of jewelry.

Q. Did you make any sale before the accident occurred?

A. Yes, sir.

Q. Did you have a memorandum of the sales?

A. Yes, sir.

Q. And you deducted those sales from the inventory?

A. I went through the inventory and checked off those articles that were sold.

Q. The balance you charged to the railroad company?

A. Yes, sir; the balance were charged to the railroad company.

By consent of counsel, signatures of all the witnesses waived.

69 SEPTEMBER 24TH, 1886.

EDWARD J. KRAMPFF, being first duly sworn, testified on behalf of intervening petitioner as follows:

By Mr. TUTHILL: What is your age, Mr. Krampff?
A. 36.
Q. Where do you live?
A. At Atlanta, Illinois.
Q. What is your business?
A. I am postal clerk.
Q. Railway postal clerk?
A. Yes, sir.
Q. How long have you been a railway postal clerk?
A. Since March, 1882.
Q. Were you such postal clerk on January 30th, 1885?
A. I was on that road; yes, sir.
Q. Running from where to where?
A. From Havana to Springfield and return. I was on my return trip.
Q. What railroad is that?
A. It is the Springfield and Northwestern.
Q. Is that part of the Wabash system?
A. Yes, sir.
Q. Under the control and management of the receiver of the Wabash line?
A. Yes, sir.
Q. How long have you been running over that line up to the time of the accident?
A. Ever since March, 1882.
Q. And you are still running on that line, are you?
A. Yes, sir.
Q. Were you on the train that was wrecked on that night near Petersburg—about 2 miles from Petersburg?
A. I was.
Q. You may state as explicitly and briefly as possible all that occurred at the time of that accident.

70 A. Well, the train left Tice, the last station before, about 5 minutes later than the usual time. I have forgotten the actual time, but I can get it if it is necessary. They were about 5 minutes late. The passenger runs from Springfield to Peoria, but I run only as far as Havana. The mail route ends there. Only the train goes to Peoria.
Q. What kind of a night was it?
A. It was a bright, clear winter night.
Q. And where did the accident happen—at what time of the night was it, as near as you can tell, that it happened?
A. It happened a mile and a half north of Tice, about as near as I can give the distance, and about between 6.20 and 6.40.
Q. About how far from Petersburg?
A. I think it was 3½ miles—between Tice and Petersburg—about 2 miles.

Q. Was it light or dark?
A. It was dark, but the moon was shining.
Q. And snow on the ground?
A. Yes, sir; snow on the ground.
Q. What was the first you noticed?
A. After I picked myself up——
Q. Of the accident, what you noticed of the accident—what were you doing?
A. I was fixing up the mail pouch for Petersburg when I noticed the train off the track by the motion. A railroad man can tell when a train is off the track.
Q. You have had experience that way before, have you?
A. Yes, sir; lots of it on that road.
Q. Describe this car that you were in?
A. It was a combination car.
Q. Look at this and see if it represents the plan of bag-
71 gage car. (Witness examines paper.) Describe in your own language.
A. It is what is called a combination car. In one end is the express and in the other end is the baggage. In the middle is the mail, and a small way between both—between the three apartments, so a man can pass from one end to the other.
Q. What is in the forward end of the car?
A. The express is.
Q. Then came your apartment?
A. Yes, sir.
Q. And the next the baggage?
A. Yes; next to the coaches.
Q. With a passage along the mail and express?
A. Yes; and a glass door—the door we open in the mail department, a big glass in it.
Q. Were there any stoves in that baggage car?
A. To my certain knowledge, there were three stoves in that car.
Q. Where were they?
A. In each department.
Q. One in the express apartment?
A. Yes, sir.
Q. One in the mail?
A. Yes, sir.
Q. And one in the baggage?
A. Yes, sir.
Q. Was there any fire in any of those stoves that night?
A. I don't think there was. There was fire in my department.
Q. In the mail department?
A. Yes, sir; fire in the mail department, because I tended that myself.
Q. How long had you been familiar with that car?
A. I have had it ever since I have been on the road, except a short time it was taken away from me for repairs.
Q. When was that?
A. In the summer of 1884.

72 Q. Taken for repairs?
A. Yes, sir.
Q. What kind of a stove was in that car?
A. An old-fashioned cannon stove, cracked, with the shaker gone. When the car was taken away from me I had made complaint time and time again to the railroad and postal department about the stove.
Q. Does this diagram convey an idea to you of the stove?
(Witness examines diagram.)
A. Yes; that is about the make of the cannon stove. There were two rods lacking and it was fastened to the car.
Q. That was an old-fashioned cannon stove, as you call it. What kind of a door did it have?
A. A door that rested on hinges.
Q. Was there any latch or catch for it?
A. No, sir.
Q. What was there to prevent that from falling open if it were jolted or shaken?
A. Nothing.
Q. Would it do so?
A. Yes, sir.
Q. Of its own accord?
A. Yes, sir.
Q. State whether its being cracked——
A. It was cracked and the shaker was gone, so the ashes had to be taken from it with the hand in order to start the fire.
Q. As I understand you, you made frequent complaints to the postal and railway people in regard to this stove?
A. Yes, sir.
Q. That it was unsafe?
A. Yes, sir; and it was too much trouble for me to attend to it. Each man had to attend to his own stove and I had to attend to mine.
73 Q. And when it was sent to the car shops to be repaired in 1884 it was then sent back to you?
A. Yes, sir.
Q. Anything done to the stove?
A. No, sir.
Q. Same old stove?
A. Yes, sir. While the car was in for repairs I wrote to the department telling the postal department that the car was taken to Peoria and that it would be a good time to insist on getting a new stove put in there. When the car came back the same old stove was in there, and when the car fell it was wrecked and broken to pieces.
Q. You saw it?
A. Yes, sir; part of the stove fell against me.
Q. Was the fire in the other car—the passengers—was there fire in the passenger car?
A. Yes, sir.

Q. Did they have the same kind of doors?

A. No, sir; there was a binding; they were regulation stoves; the door shuts with a snap spring.

Q. A patent door that couldn't be opened when the car is thrown off the track?

A. Yes, sir.

Q. In fact there was no other fire except in this car—no other car caught fire?

A. No, sir.

Q. Was there any bucket in this car?

A. No, sir.

Q. Did you look for a bucket or did you know there was none?

A. I knew there wasn't any. I didn't look for any. I called for one.

Q. To whom?

A. I called to the trainmen, but they didn't pay any attention.

Q. Where were they?

74 A. In the back part of the coach, I believe.

Q. Did you see the engineer?

A. Yes; and the fireman, and they never came back to see what was the matter; they commenced to work on the engine.

Q. How far was that from the baggage car?

A. 30 feet, I think; they were across the bridge.

Q. And this occurre- where?

A. What you call going down grade. It was at the foot of a ravine.

Q. What went in this ravine?

A. When I jumped from the car I got into water 6 or 8 inches deep.

Q. Describe the locality of this accident. If that diagram gives a general idea you may use that.

A. I guess that is about correct.

Q. Describe it.

A. We were going down grade, and, as we were some behindhand, going rather fast.

Q. Is there a curve there?

A. Yes, sir.

Q. How much of a curve was there?

A. I couldn't tell. I don't know. I know I ran over it for years, but I am not enough of a trackman to know how much it was. It was a tolerable sharp curve, what you would call a sharp curve.

Q. If you had had a bucket there was there time enough after the wreck to have put out the fire if you had had a bucket?

A. I could have put out the fire. I remarked at the time that it was a shame that car would have to burn. I couldn't do it alone. I wanted to save the mail. I couldn't get a bucket. I gathered some snow and threw it on the place where it commenced to burn,

75 but I couldn't get at it. It was right in the corner where the partition is. The partition was knocked through and the coals fell through into the baggage, and there were trunks lying on top of it when it commenced to burn, and I am positive if I had a bucket

I could have put it out. I was standing in the creek; I was standing in the water.

Q. Were you injured by this accident?

(Objected to.)

A. Yes; laid up three weeks.

Q. Remember what rate of speed the train was running at the time of the accident?

A. I should judge 25 or 30 miles an hour.

Q. Do you know what caused this accident?

A. I looked at it after I got out of the car, and I saved part of the mail. I saved one express package, and after the car commenced to burn so I couldn't do anything more I went back and examined what caused the wreck, and the trainmen also did.

Q. What did you discover?

A. It was caused by spreading of the rails, as near as I could see.

Q. How much were they spread?

A. Maybe one, two, or three feet; enough to let the whole thing through.

Q. How could the rails spread? Did you notice any broken rails?

A. I did not.

Q. You looked to see?

A. I think I did.

Q. You saw these rails were spread?

A. Yes, sir.

Q. How could they spread?

A. That I don't know.

Q. Did you notice about the spikes in the ties?

A. No, sir; I did not.

76 Q. Did you notice the condition of any of the ties?

A. I noticed the condition of the ties so often over that road.

Q. What was the condition of the ties?

A. They were rotten.

Q. Notice where the wheels struck them?

A. The wheels would only cut the ties when they are rotten; only sometimes they will crush by the wheels running over it.

Q. How were these?

A. Part of them were crushed.

Q. And I understood you to say that you had known of other cars or trains running off the track on this road repeatedly since you have been running over it?

(Objected to.)

A. Yes, sir.

Q. How often since you have been running on that road have you known of trains being wrecked?

A. I could not tell how often; for awhile it was a weekly occurrence, anyhow.

(Objected to.)

By the MASTER: It may go in subject to the objection.

Q. Had you observed the condition of the ties at other times prior to this accident on that road?

A. Yes, sir.

Q. Ever notice anything particular about the spikes in the ties, as to whether they were firmly set or not?

A. As I said, I was not enough of a railroad man to know about that, but I can tell when I see a rotten tie.

Q. How many pieces did that stove break into?

A. I can't tell; three or four pieces at least.

77 Q. How many cracks were in the stove before the accident?

A. Two.

Q. How large were they?

A. They were not large; they were, perhaps, an inch in length or more.

Q. Where in the stove were these cracks?

A. In the lower part of the stove; in the part that holds the fire.

Counsel for intervening petitioner offers the diagram representing the plan of the baggage car, as Exhibit C; diagram representing the stove, as Exhibit D; diagram representing the scene of the accident, as Exhibit E.

Q. Were there any brakemen on the cars at the time of the accident?

A. Yes, sir; two.

Q. On the baggage car?

A. No, sir; they were in the back coach, not in the baggage—that is, that was what they told me. I don't know of my own knowledge. I know that if they had been there they were likely to be hurt.

Q. I understood you to say that if there had been a bucket you could have saved the car from burning?

A. Yes, sir; and I called for a bucket, and when I saw the trainmen didn't pay any attention to the burning of the car I thought I couldn't myself try to save it alone. I tried to save my mail. I had an unusually heavy mail, an unusually heavy Petersburg mail. I couldn't find that pouch, but three or four empty pouches were lying around. I got snow and threw on it. When the fire started it was a little place.

Q. What was the situation of the car after the accident—was it lying on its side or on its top?

A. It was almost on its top; it slid down sideways; it struck something and was thrown off. I was standing or lying in

78 the top of it when I got through. *Q.* It turned over on its side, sliding down 20 or 30 feet on its side; then it turned clear over on its top. The trucks were in the air.

Q. How did you protect yourself from injury?

A. Kind Providence protected me.

Q. Did you catch hold of anything?

A. I caught hold of the guard-rail that we use when we throw

mail out of the car. I fell on that side of the car when it fell over—an iron guard-rail, and it was on that side.

Q. How did you get out of the car?

A. I got out of the window. This combination style has good-sized windows.

Q. I understood you to say there was no fire except in one stove in the baggage car.

A. That is all I know of, because the trainmen had nothing to do. The trainmen used overcoats and I used to work in my shirt sleeves, and had to have a fire.

Q. State in reference to the condition of the car whether it was an old car or a new car.

A. I don't know how old it was. I know it had been in the shops; it was in fair condition.

Q. Been sent to the shops as being in a bad condition in 1884?

A. Yes, sir.

Q. It was an old car?

A. I suppose so.

Q. Burnt fast, or how?

A. Burnt very fast after it got started.

Q. Do they run as fast on that road now as before this accident?

(Objected to.)

A. No, sir; at the time of this accident it run faster.

79 Cross-examination by Mr. BURNETT:

Q. When did you say you were appointed postal clerk?

A. In 1883, in March—the 24th, I think; I am not positive.

Q. Under the administration of President Arthur?

A. I believe so.

Q. And you held right on under the new Democratic administration?

A. Yes, sir.

Q. Haven't put anybody else in your place?

A. No, sir.

Q. You have been very anxious to be relieved from that position, haven't you, on account of danger?

A. Yes, sir.

Q. Haven't you appealed to Washington to be relieved?

A. No, sir.

Q. Haven't you appealed to Washington?

A. I have appealed for a transfer.

Q. You want to work under this administration?

A. Yes; it suits me good enough.

Q. You wanted to go off that road on account of danger?

A. Yes, sir.

Q. Isn't the principal reason you were afraid of your life—afraid of being killed?

A. No, sir.

Q. You are not?

A. No, sir.

Q. What sort of a road is that; not a first-class road, is it?
A. No, sir.
Q. Very little business done on it?
A. I don't know about the business.
Q. How long have you been running on that road?
A. Four or five years.
Q. Haven't you any idea as to the amount of business done in three or four years?
A. I have always understood it didn't pay.
Q. Always understood it didn't pay?
80 A. From what I know it was a tenth-class road.
Q. Everybody knows it is not a first-class road that knows anything about it?
A. Yes, sir.
Q. When did you come up here to Chicago?
A. Came here Monday.
Q. Been here ever since?
A. Yes, sir.
Q. Where have you been staying here?
A. At a hotel.
Q. At what hotel?
A. The Madison house.
Q. Have you had any conversation with Mr. Perry or his counsel?
A. No, sir.
Q. Haven't seen them at all?
A. I have seen Mr. Perry in Springfield.
Q. Will you answer my question, have you been up to consult with them since you have been here?
A. Yes, sir.
Q. Where have you been in consultation?
A. At their office.
Q. How many times?
A. Once.
Q. When was that?
A. Yesterday.
Q. Told them all about what you knew about this case?
A. Yes, sir.
Q. Who drew these diagrams, do you know?
A. No, sir.
Q. Who were they drawn by?
A. I think Mr. Fisher, of Petersburg.
Q. He is the county surveyor or civil engineer?
A. No; I don't think the diagrams look that way.
Q. You say this was what was called a barrel or cannon stove; an old-fashioned cast-iron?
A. Yes, sir.
Q. And it was cracked?
A. Yes, sir.
81 Q. What did you make a claim about it for? Wasn't it

because it was so hard to make a fire and take the ashes out? Wasn't that what you were jawing about?

A. Yes; I told them it was unfit for use.

Q. It didn't draw well?

A. Yes; any stove will draw when the cars are running.

Q. How did the cracks hurt it?

A. It was liable to come to pieces most any day.

Q. Most any stove would come to pieces if the car was thrown bottom side up and running 25 or 30 miles an hour?

A. It depends on circumstances.

Q. What kind of circumstances?

A. It wasn't well fastened; the other stoves didn't come apart; they were well fastened.

Q. That would depend on how the car struck and its position a good deal?

A. Yes, I suppose so.

Q. Did you ever see a bucket kept in a baggage car or mail car?

A. No, sir; none ever been kept in that car since I was mail agent.

Q. Ever see one on any mail car?

A. I believe I have; yes, sir; on the main line.

Q. Who furnished them?

A. The railroad department.

Q. The bucket in this train was in the passenger coach with the saw and axe?

A. I don't know anything about that.

Q. You didn't examine?

A. No, sir.

Q. You say this was running about 25 or 30 miles an hour?

A. I don't know; I can't tell; that was what I called it.

82 Q. Did you have anything to call your attention to the speed of the train at that time?

A. It was running fast; our time is fast.

Q. What is the time from Springfield to Petersburg?

A. I don't know unless I can see a time-card.

Q. What time did you leave Springfield?

A. 5.30.

Q. What time did you get to Petersburg?

A. I think it was 6.35 or 40, something like that.

Q. You had about an hour and a half to run from Springfield to Petersburg?

A. I don't know; we had two hours and 15 minutes to run from Springfield to Havana.

Q. How far is Havana beyond Petersburg?

A. 25 miles, I think.

Q. You had two hours and 15 minutes from Springfield to Havana?

A. Yes, sir; 48 miles.

Q. Isn't it 40?

A. No; it is 48½, according to the time-card.

Q. Didn't you have on the time-card about one hour and 35 minutes to run from Springfield to Petersburg?

A. I don't remember; I don't think it was that.

Q. The distance is 20 miles to Petersburg?

A. No; 22 or 25; it is either from Springfield to Petersburg or from Havana to Petersburg 25; Petersburg to Springfield, I think; I haven't paid particular attention to it.

Q. I understood you to say it was a warm night?

83 A. It was a warm night for winter; it had been thawing.

Q. You have much fire?

A. No; very small.

Q. When did you build it, before you left Springfield?

A. I didn't build it; it was the trainman's duty; it was built in Springfield.

Q. You gave your attention to it after you left Springfield?

A. I don't think I did; maybe threw in a shovel of coal; I don't know whether I did or not.

Q. Did you examine the track that night, where the accident occur-ed?

A. Yes, sir.

Q. Did you have any light to do it with?

A. No, sir.

Q. Was it dark?

A. The moon was shining.

Q. Did you examine it for the purpose of ascertaining the cause of the accident?

A. Yes, because I was requested to make a report to the department.

Q. You made one and signed it and swore to it?

A. Yes, sir.

Q. Do you know what the contents of that report is now?

A. No, I don't think I do.

Q. Would you know that report if you should see it?

A. Yes, sir.

Q. What conclusion did you come to that night in regard to the cause of the accident?

A. Caused by spreading rails.

Q. Didn't you conclude they were caused to spread by the wheels going on the ties and they caused the track to spread? The track spread and the wheels went off?

A. I don't know; I didn't come to any conclusion.

Q. Did you examine for a broken rail?

A. I think I did; I didn't see any.

84 Q. Didn't see any broken rail?

A. No, sir.

Q. You say you saw some rotten ties?

A. Yes, sir.

Q. Saw them in the night, did you?

A. No; I didn't say I saw any rotten ties that night.

Q. Then you didn't see any rotten ties at this time at all?

A. Not that I know of.

Q. Have you had any experience in railroading and repairing railroads after accidents?

A. None, only what I see by looking.

Q. What was your business before you were postal clerk?

A. I was keeping books in Indianapolis, Indiana.

Q. You don't know what caused this particular accident, do you, of your own knowledge?

A. No, sir.

85 SEPTEMBER 24TH, 1886.

GEORGE M. JOHNSON, being first duly sworn, testified on behalf of petitioners as follows:

By Mr. TUTHILL: What is your age, Mr. Johnson?

A. 64, in a few days.

Q. Where do you live?

A. Petersburg, Illinois.

Q. How long have you lived in Petersburg?

A. Thirty-odd years.

Q. What is your business?

A. Wagon and carriage making now.

Q. What business were you engaged in in January, 1885?

A. I was bridgeman, working for the Wabash road.

Q. This defen-ant?

A. Yes, sir.

Q. How long have you been employed by this company as bridgeman before that time?

A. Well, about eight years and a half; went off the spring following.

Q. Were you frequently over the road and familiar with it in the neighborhood of Petersburg?

A. I know every foot of the road; over it frequently. We traveled on the hand car principally to different points.

Q. State what was the condition of that road at that time as to the road-bed or ties, spikes, &c. (objected to), and what had been its condition, how long it had been in that condition, prior to that time.

A. The ties were not good.

Q. What do you mean by that?

A. Well, rotten.

Q. Now, as to the spikes that fasten the rails?

A. Spikes don't do any good unless they are driven into sound wood.

86 Q. What was the condition of these spikes driven in these ties?

A. A great many of them were loose; could pull them out with your fingers.

Q. Where were you at the time this accident happened?

A. I was at Cantrell.

Q. How far is that from the scene of the accident?

A. Well, about 9 miles.

Q. Which way from Springfield?
A. Toward Springfield.
Q. What were you doing at Cantrell?
A. Framing a bridge for Cantrell.
Q. How soon were you at the scene of this accident?
A. The next evening.
Q. How did you happen to go there?
A. We went home the next evening to Petersburg.
Q. Did you have to stop at the accident?
A. Yes; we had a curiosity to stop and see it.
Q. State what you found the next evening.
A. I found that they had remodeled the track the night before, so that they could get over, by putting in a few new ties. They didn't have ties enough and they put them in pretty thin; but the old ones, a great many of them, were crushed by the wheels running over them.
Q. State as to these ties whether they were sound or rotten.
A. They were rotten, a great many of them.
Q. Did you notice anything to show what caused the accident?
A. The cause was the spreading of the track.
Q. Of the rails?
A. It is a pretty large curve and they run pretty fast around
87 there. They couldn't help it, running pretty fast, and the rails spread and let in one end of the tender and all behind it.
Q. The engine kept the track, but the tender got off?
A. The engine kept the track, but the tender got off, because it kept on going—the engine—and run across the bridge.
Q. And the ties were spread because the spikes were not in firmly?
A. They had spread and the coaches behind came on and, of course, it spread the rails.
Q. How much were they spread?
A. It had spread them two or three feet in places where it had caught them on the upper side and forced them away.
Q. Did you notice as to whether the spikes at this particular place were loose or whether they were sound?
A. They had been loose. I have worked there. We put in a new bridge a short time before, and we went up the track and picked spikes out of the ties to finish when we didn't have enough.
Q. How did you pull them out?
A. Some with fingers and some with crow-bars.
Q. Held by nothing?
A. The spikes in old rotten ties.
Q. How many spikes do you think you pulled out in order to fix the bridge?
A. I didn't get over a half dozen, I don't think; might have been a few more or might have been a dozen.
Q. What was the condition of the ties there at this place and where the spreading occurred?
A. They wasn't good.
Q. To what extent wasn't they good?

A. Some of them were rotten—insufficient to hold the spikes.

88 Q. State whether or not the rail—the track—had been crushed down through the end of the ties by the weight of the wheels running over them.

A. That is frequently the case on all roads when the ties become rotten; the weight of the train will mash them down and a great many times will break clear off.

Q. How was it at this place?

A. There were ties off there.

Q. That had been crushed through in that manner by the weight of the train in running over them?

A. Yes, sir.

Q. Was there anything of the wreck left when you got there?

A. There were two coaches laying there.

Q. The passenger coaches?

A. Yes, sir.

Q. Was the baggage car there?

A. No; it was burnt up.

Q. Did you see anything of any stove there?

A. Yes; there was a broken stove there in the wreck.

Q. How many pieces was it broken into?

A. I couldn't tell exactly; probably two or three or four; something like that.

Q. Did you notice the door to that stove?

A. No; I did not.

Q. Were you familiar with that stove in that mail car?

A. I was familiar with the whole concern, because I kept that car repaired.

Q. Tell what kind that was in the baggage car.

A. It was what is called a cannon stove. It was a bowl—an old-fashioned cast-iron stove.

Q. State as to whether it was cracked or not.

89 A. I couldn't say whether it was cracked or not.

Q. As to the door—fastening on the door—what was it, first-class fastener?

(Objected to.)

A. No, sir; that kind of a stove wouldn't stay shut if you shake it. It was hung on hinges, and with the shaking of the car the door wouldn't stay shut.

Q. The door flies open by the shaking of the car?

A. Yes, sir.

Q. State whether you ever recommended to the company about having a different kind put in there.

(Objected to.)

A. No, sir; never have.

Cross-examination by Mr. BURNETT:

Q. You say you were bridgeman there?
A. Yes, sir.
Q. How long were you bridgeman?
A. Eight years I was on there; 9 or 8 years I was bridgeman.
Q. When did you leave the service of the company?
A. A year ago last spring.
Q. Did you quit on account of the dangerous condition of the track?
A. No, sir; I never quit anything on account of danger.
Q. You are perfectly fearless of danger?
A. I can go where anybody can go.
Q. How came you to quit?
A. The number of men that was put off, and my son was one out of the number that was to go off and I gave him my place and quit.

90 Q. You say you were building a bridge up near the scene of this accident and put in a bridge a few days before?
A. A short time before.
Q. That you went and pulled some of the spikes where this accident occurred?
A. I did.
Q. Did you pull them with your fingers?
A. I pulled them with my fingers.
Q. How many did you pull with your fingers?
A. Half a dozen or such a matter.
Q. That was what caused the accident?
A. No, sir.
Q. Did you use the claw-bar to pull any spikes?
A. Not there.
Q. Did you pull any spikes at the place where this occurred?
A. No, sir.
Q. Did you know anything about the condition of the ties at the point where the accident occurred?
A. Yes; spikes are loose there because there is nothing to drive them into unless you drive into the ground.
Q. You have described very minutely and graphically how this accident occurred. You were there and saw it?
A. No, sir.
Q. How did you know about it?
A. Because——
Q. How did you know the engine kept the track, excepting the tender?
A. They told me.
Q. Ah, then, you are testifying to what was told you?
A. I can tell more than you want them to know.
Q. Open the valve and tell it all.
A. I don't wish to.

Q. Answer my question when you are stating what oc-
91 curred—how the accident occurred—how the train went off.

You were telling what somebody told you, and not what you saw.

A. No; where the engine jumped the track the ties show exactly where they came off, within two inches.

Q. Can you tell the difference between the engine striking the track and a car doing the same after it is over?

A. Yes, sir.

Q. How?

A. The engine makes a bigger impression than the car.

Q. You swear, now, that the engine—the tender of the engine—jumped the track first?

A. No; ahead of the car, as it was, because the track and grade shows where the train and end of the tender jumped off and where it crossed the bridge.

Q. How do you know whether that was the tender or the forward part of the engine?

A. Because it shows for itself.

Q. What was there to indicate that it was the tender rather than the drive-wheels?

A. The *phal*anges of the wheels, where it run on the ties when the engine jumped off; it makes a deeper impression in the ground or ties than the tender of cars.

Q. Suppose it was some other part of the engine besides the tender; suppose it was the forward trucks?

A. It makes a different impression.

Q. What is the difference?

A. It cuts deeper—mashes it worse.

Q. You went down the next evening?

A. Yes, sir.

92 Q. You and your bridge gang?

A. Yes, sir.

Q. Who was with you?

A. My son.

Q. Who was the foreman?

A. John North.

Q. Did the men with you besides yourself——

A. Mr. North was in the wreck—the foreman was in the wreck himself the night before.

Q. Who was with you?

A. Frank Johnson, John Castile, Azro Johnson.

Q. Anybody else?

A. I think that was all.

Q. You all looked and examined the wreck?

A. Yes, sir; stopped and looked at it.

Q. The track had been repaired in the meantime so that trains had gone over it?

A. Yes, sir; the night before.

Q. These rotten ties you speak of, were they rotten clear through?

A. Some of them were.

Q. Isn't it true that you find some rotten ties in almost every railway they keep changing all the time?

A. Yes, sir.
Q. Keep changing all the time?
A. Yes, sir.
Q. You have had years experience in railroading, I suppose, haven't you?
A. Yes; I have had 10 years on the Wabash.
Q. That isn't a first-class road?
A. No, sir.
Q. Very little business done on it, comparatively?
A. Pretty good business done on it for a branch; pretty good little road, if they will just put it in a good fix.

Q. What you mean to say is, there were rotten ties in places;
93 they kept changing and putting in new ties all the time?
A. When they could get them.
Q. The section men put them in when they could get them?
A. The section men put them in when they could get them; yes, sir.
Q. You know who was the section foreman on that section at that time?
A. No; I do not. They have changed them so often I don't believe I can recollect.

94 SEPTEMBER 24TH, 1886.

CHARLES W. TURNER, being first duly sworn, testified on behalf of intervening petitioner as follows:

By Mr. TUTHILL: What is your name?
A. Charles W. Turner.
Q. Where do you live, Mr. Turner?
A. I live about 2 miles southeast of Petersburg?
Q. How long have you lived there?
A. I have lived there about 25 years.
Q. What is your business?
A. Now or then?
Q. What is your business now?
A. I am a farmer.
Q. What was it in January, 1885?
A. Carpenter.
Q. You are a carpenter by trade?
A. Yes, sir.
Q. Who were you working for at the time—January, 1885?
A. At that time I was not working at all. I had worked for the Wabash before that.
Q. On that part of its line between Springfield and Petersburg?
A. Yes, sir.
Q. When did you quit working for that road?
A. I can't tell exactly; in the fall some time.
Q. In what capacity were you working?
A. Bridge carpenter; working along with Mr. Johnson.
Q. How long did you work?
A. I think 3 years.

Q. Were you familiar with the scene of this accident?
A. Yes, sir; it was a quarter of a mile from our house.
Q. I will ask you if you helped to build that bridge?
A. Yes, sir.
Q. When was it rebuilt?
95 A. I can't tell. I can't recollect dates.
Q. When you were building the bridge you went to see this accident?
A. The baggage car struck the guard-rail and turned over.
Q. As the previous witness stated, there was a curve before you came to the bridge?
A. The bridge is in a curve—a sharp curve there.
Q. Were you there at the time of the accident?
A. I was there in a few minutes afterwards.
Q. Where were you when it happened?
A. I was at Tice, at a debate.
Q. How far was that from the scene of the accident?
A. About a mile and a quarter.
Q. What was the first you knew there had been an accident, and then what did you do, if anything?
A. The first I knew there had been an accident, of my own knowledge, was when I arrived at the accident the boys said the train was off. I found it true.
Q. Then you went there?
A. Yes; as quick as I could.
Q. What was the condition of affairs when you got there?
A. The coaches and smoker were lying on their sides at that angle—about 45 degrees—with the wheels up, I suppose, 10 feet, maybe, on the other side of the bank, and the baggage car was pretty near in ashes.
Q. The train wasn't gone across the branch?
A. No, sir. The engine was across.
Q. The baggage car stopped, I understood you to say?
96 A. Yes; I think it had turned over some time before I got there.
Q. Was it burning when you got there?
A. Yes; it was pretty near burned up; it was pretty hot; it was pretty well burned up.
Q. You say you were familiar with the track at this place up to this time?
A. Yes, sir; as I was with my farm; it was a quarter of a mile away.
Q. What was the condition of the track as to the ties being sound or unsound and the spikes being firm or infirm in the ties?
A. The ties were rotten. I think they were new ties put in 8 or 10 feet apart where the ties were rotten—some sound ties they have to—same as to let the train run over it at all. Generally the track was in a bad condition, and where the rails lay on the ties I have noticed along there when the train runs over the end of the ties break off.
Q. Cut off by the rail?

A. Yes; the rail mashes in them; they would be broken off and only a few ties in there that were sound enough to hold. Some of them were sound and some were entirely rotten.

Q. The previous witness spoke of spikes that you could pull out with your fingers. Notice anything of that matter?

A. At the time we built the bridge we often did; we would go up the track and pick them out of the ties; we never pulled any out, though, that would hold anything; that were sound enough to hold anything.

Q. Did you examine that night to see what was the cause of it?

97 A. Yes, sir.

Q. Did you have any lantern there?

A. Yes; but it wasn't very dark; the snow was on the ground. I don't recollect whether the moon was shining or not. I could see everything. The rail on the off side of the curve looked to me like it had gone off 2 or 3 ties. If the spikes don't hold it the rail will roll off. The engine wasn't off the track at all. I didn't go to the baggage; it was not on.

Q. What was the cause of this accident?

A. The principal cause was the bad condition of the track—rotten ties and bad condition of the track.

Q. Did the rails spread?

A. Yes, sir; no broken rails; the rails were sound.

Q. No broken rails?

A. No, sir.

Q. Did you examine to see whether there was a broken rail?

A. Yes, sir; the rails were all together; all sound; not broken.

Q. I understood you to say something about going around the curve—the weight of the engine would have a tendency to go straight ahead and that would bring the pressure against the outside rails, wouldn't it?

A. Yes, sir.

Q. Lean against them and the wheels?

A. Yes, sir.

Q. The weight is on that side?

A. Yes, sir.

Q. The outside of the curve?

A. Yes, sir; you can notice the outside rail is always worn on the inside.

Q. You said the baggage car was burning when you got there. Were you familiar with the baggage car?

A. Yes; been on it a hundred times.

98 Q. Ever notice the car in the mail part?

A. No, sir; I never was in there. There was a passage on one side you could go back and forward from one part to the other.

Q. You never noticed the stove in the mail car?

A. No, sir.

Q. Did you notice the stove after the wreck?

A. Yes, sir.

Q. In what condition was it?

A. It was mashed and broken up. I didn't see the stove. I saw pieces of the stove.

Q. Pieces of a cast-iron stove?

A. Pieces of a cast-iron cannon stove—what is called a cannon stove.

Q. Notice the door of the stove?

A. No, sir; never saw it.

Q. How long had the ties along there been in that condition, to your knowledge?

A. They had been in that condition, oh, for 4, 5, or 6 years.

Cross-examination waived.

99 SEPTEMBER 24TH, 1886.

CHARLES A. FISHER, being first duly sworn, testified on behalf of the intervening petitioner as follows:

By Mr. TUTHILL: Please state your full name.

A. Charles A. Fisher.

Q. Where do you live, Mr. Fisher?

A. Petersburg.

Q. What is your business?

A. Watchmaker and jeweler at Petersburg.

Q. And artist?

A. And artist.

Q. And drew these maps and diagrams in evidence?

A. Yes, sir.

Q. State in your own language what you know about this wreck, this accident.

A. I know very little about the accident, except that I was out there in the evening as I came from supper. Passing along—I live on a hill, our town is on a bluff—I noticed a light in the direction of the accident. I didn't know what it was. I arrived at the store and was engaged at putting my jewelry away when Mr. Perry came in, seemed very much excited, and asked me when there would be a train going to Chicago, and I asked his trouble. He said — lost his trunk in the car and it was burning up.

Q. State just what he did.

A. I sent him to supper and engaged a sleigh and a driver with the sleigh. We went there and took things preparatory to bringing them in. I thought I knew the financial condition of the road. I told him I didn't believe it was worth the worry. He said he would go and get all the rubbish he could. We went out to the
100 wreck; found a living mass of coals and fire. He soon discovered the iron trimmings of his trunk among the debris and we——

Q. State just what occurred.

A. About this time I saw Mr. Turner, whom I recognized among the crowd—he and his son were the only ones that I recognized that I could trust—and I asked them to please give us all the assistance th y could; they did, in keeping the crowds back and in scraping

up the gold and remains. I think after half past three returned and went to my place of business—my room is in the store, small room adjoining the store—and there we staid trying to sort the nature of the debris and get those that we — to be gold separated from those which were plated. We sorted as well as we could. He left at 6.30 for Chicago, in the morning, only a few hours. We left off and put into a box and nailed the box up that night and retired. I got up to let him out. At train time I lay down again till my brother came to open the store; I then got up and took a heavy cord and wrapped around this heavy box.

Q. How did you wrap it?

A. I don't know. It was crossed on the wooden box in such a way as I do in my business. I wrapped the string in such a manner you couldn't get a board off without breaking the box. I sealed it with my business seal and deposited it with the bank of D. S. Frackleton & Company.

Q. You packed it in a box and sealed it and sent it to Chicago?

A. Yes, sir.

Q. All you got there you sent to Chicago?

A. There are a few pieces that were brought in by honest people who found them and thought they should be returned; little bits that didn't amount to anything. Mr. Perry has seen them and don't value them. With this exception, I think they are all in Chicago.

Cross-examination waived.

101 SEPTEMBER 24TH, 1886.

LEVERETTE J. NORTON, being first duly sworn, testified on behalf of intervening petitioner as follows:

By Mr. TUTHILL: What is your age?

A. Fifty.

Q. What business are you engaged in?

A. Jewelry business.

Q. What firm?

A. N. Matson & Company.

Q. Are you a member of the firm?

A. Yes, sir.

Q. Wholesale jewelry business?

A. Wholesale and retail.

Q. How long have you been in this business?

A. About 30 years.

Q. In this city?

A. Not altogether; been here about 22 or 23 years.

Q. Have you been familiar during the 30 years last past with the wholesale and retail jewelry business as conducted in this city and others?

A. I have, sir.

Q. State how the jobbing or wholesale business is conducted by commercial travelers.

A. It has been conducted, as far as my experience, by samples of goods being carried in trunks on the road.

Q. Carrying a stock of goods and selling from the trunk?

A. Yes, sir; delivering from the trunk.

Q. Is that the universal custom throughout the United States?

A. I think it is.

Q. You are familiar with the custom and usage of the business?

A. All except the manufactures of cheap goods sell from
102 samples; but fine goods that are being carried by jobbers are carried in trunks.

Q. How does it come to pass this jewelry business is carried on in this manner—the fact that the goods occupy small compass?

A. Yes; and the fact that parties would rather select goods than pick from samples.

Q. How are these trunks of jewelry transported—what has been the custom of the railroads in that respect?

A. Checking them as baggage.

Defendant objects to all this evidence as to showing the custom.

Q. Is that the universal custom, checking trunks as baggage?

A. So far as my knowledge has been, yes, sir; we have had from 4 to 6 trunks on the road for a great many years, and have never had any complaint from any of them. We have no men on the road now, but as long as they were on the road.

Q. No complaint that they were not able to check as baggage?

A. Never heard any from our men; no, sir.

Q. Have you had any experience in buying from persons traveling in that manner with their stock in trunks?

A. Yes, sir.

Q. To what extent have you bought from these persons?

A. My impression is that three-fourths of the jewelry sold throughout the country is sold in that way.

Q. Sold from trunks carried on the road by traveling salesmen?

A. Yes, sir.

Cross-examination waived.

103 SEPTEMBER 24TH, 1886.

THEODORE KEARNEY, being first duly sworn, testified on behalf of intervening petitioner as follows:

By Mr. TUTHILL: What business are you in?

A. In the wholesale jewelry business.

Q. In Chicago?

A. Yes, sir.

Q. What is the firm name?

A. The Theodore Kearney Company.

Q. Are you the Theodore Kearney?

A. I am the Theodore Kearney; yes, sir.

Q. You are engaged in the wholesale or jobbing of jewelry, are you?

A. Yes, sir.

Q. How long have you been engaged in that business?

A. About 33 years.

Q. Are you familiar with the custom or usage throughout the United States of selling goods at wholesale?

A. Yes, sir.

Q. By traveling men?

A. Yes, sir.

Q. State what that usage has been for that time.

A. The usual custom is to carry the stock of goods of various values, according to the class of the house, and sell from that stock to the customers. It is the universal custom.

Q. What proportion of the dealing in jewelry is done in that manner?

A. I think nine-tenths in the jobbing trade.

Q. And how is this jewelry carried from place to place?

A. Carried as baggage—trunks checked as baggage; carried in compartments made in the trunk for that particular purpose.

Q. What kind of trunks are they carried in?

A. What is known as the Couch and Fitzgerald trunks—wooden trunks. I think they are made for that express purpose—
104 almost universally made and used for that purpose.

Q. Iron bound?

A. Iron strapped, not bound. Properly, iron corners and strips covered by three or four strips in various ways.

Q. Have you bought goods from persons traveling and carrying stocks in that way?

A. Yes, sir.

Q. I understood you to say you are familiar with this business as carried on throughout the country?

A. Yes, sir.

Q. And it is the almost universal custom to sell goods from the trunk?

A. Yes, sir.

Q. And the trunk is transported as baggage?

A. Yes, sir.

Cross-examination.

By Mr. BURNETT:

Q. You are acquainted with the prices of jewelry, I suppose?

A. Somewhat; yes, sir.

Q. What is the average cost of jewelry, such as is sold in that manner, as compared with the jobbing price or the price at which you sell it?

A. You mean the value—the profits?

Q. Yes; the profits. What is the percentage or difference between the price at which the jobbers buy it and the price at which they sell it?

A. 25%, I should think, would be a fair average profit. It varies a good deal according to what the goods are and how fresh they are.

105 SEPTEMBER 24TH, 1886.

C. H. SPENCER, being first duly sworn, testified on behalf of intervening petitioner as follows:

By Mr. TUTHILL: What is your business, Mr. Spencer?
A. Wholesale jewelry business.
Q. With what firm?
A. B. F. Norris, Alister & Company.
Q. Are you a member of the firm?
A. I am not.
Q. How long have you been engaged in this business?
A. 10 years.
Q. In this city?
A. Yes, sir.
Q. With what firm?
A. No, sir.
Q. What other firms have you worked for?
A. W. V. Clapp, Young & Company, Otto & Company.
Q. Those firms—say whether those are large houses, large dealers.
A. All large houses; wholesale.
Q. Is that—the present company—one of the largest jobbing houses in this city?
A. It is, sir.
Q. What is your position with that firm?
A. Manager and buyer.
Q. For the company?
A. Yes, sir.
Q. I will ask you how this jobbing of jewelry is conducted in this country—in Chicago, Philadelphia, New York, Boston, and Baltimore.
A. How do you mean—by sales?
Q. Yes.
A. Somewhat through express. Not as much as in years gone by, but ever since. The principal mode of selling goods at the present time is through trunks—stocks on the road.
Q. Traveling men carry a stock of goods in trunks?
A. Yes, sir.
Q. And sell it to dealers in the country from the trunks?
106 A. That is the principal mode of selling.
Q. Is that manner of selling goods universal throughout the country, as far as you know?
A. Yes, sir.
Q. You are familiar with the usage throughout the country?
A. Yes, sir.
Q. How are these trunks transported from place to place?
A. By express—by baggage, that is, of course.

Q. Do you mean they are expressed by express companies or carried by the railroad company as baggage?

A. Carried by the railroad company as baggage.

Q. Is that on all the railroad lines, so far as you know, throughout the country?

A. Yes, sir.

Q. Carried as baggage?

A. Yes, sir.

Q. That has been the custom as long as you have been in the business, I understood you to say?

A. Yes, sir.

Cross-examination by Mr. BURNETT:

Q. I understood you to say that they sometimes shipped by express?

A. There was a time the companies, as I understood, refused to accept a trunk as baggage, but that was for a very short term.

Q. Can you name any railroad company now that receives jewelry as baggage if they know that the trunk contains jewelry, and please name the company?

A. I don't know any railroad—I don't know that I do.

Q. I will ask you if it isn't true that every railroad in this country, without exception, has among its rules in respect to the shipment of baggage that they will not be responsible for the loss of anything that is not personal baggage.

By Mr. TUTHILL: State what you know yourself. If you
107 know the rules you may state it.

A. As I understand at the present time, the shippers are not bound——

By Mr. TUTHILL: State what you know. I don't want your understanding or what somebody told you.

A. I don't know really anything about it.

By Mr. BURNETT: Isn't it true they request them to give security or indemnity against loss if they take articles in trunks such as jewelry?

A. I don't know by personal experience.

Q. Why did you start to say it was usual to give bonds?

A. I say I have heard that.

Q. You heard that in your business?

A. Yes, sir.

Q. What is that bond for?

A. I don't know.

Q. To indemnify the company against loss, isn't it?

A. I don't know personally anything about it. I couldn't say.

Q. Did you ever take a trunk to a railroad company and say, "Here is a trunk containing jew-lery; I want a check for it"?

A. No, sir.

Q. You found it cheaper to ship it as baggage than express?

A. Oh, certainly.

Q. If you don't have but a hundred and fifty pounds it goes for nothing. Isn't that the rule?

A. Yes; I think it is.

Q. And if you have an excess of 150 pounds you pay a small sum?

A. Yes, sir.

By Mr. TUTHILL:

Q. Do you know of any railroad that refuses to accept jewelry trunks as baggage?

A. No; I do not.

By Mr. BURNETT: How can they refuse if they don't know what the trunk contains?

A. How can they refuse?

Q. Yes. Why should they refuse if they don't know?

A. I don't know why they should.

108 SEPTEMBER 24TH, 1886.

JOHN H. PERRY, being first duly sworn, testified on behalf of intervening petitioner as follows:

By Mr. TUTHILL: What business are you engaged in, Mr. Perry?

A. Wholesale jewelry.

Q. What is your firm name?

A. Perry Brothers.

Q. Located in Chicago?

A. Located in Chicago.

Q. How long have you been engaged in the wholesale jewelry business in Chicago?

A. Since January, 1882.

Q. Where is your place of business?

A. Corner of State and Monroe.

Q. Were you engaged in this business before you went into this business for yourself?

A. No, sir.

Q. I will ask you if you are familiar with the usages and customs of the wholesale and jobbing jewelers in reference to selling their goods.

A. To a fair extent I am.

Q. How are they sold?

A. Our goods have been sold in that way.

Q. How?

A. Sold by traveling men from trunks on the road; stock carried by traveling men and delivered as the sales were made and bills sent into the house.

Q. How are these trunks transported from place to place?

A. Checked as baggage.

Q. Have you known at any time of their being any objection on the part of the railway company to taking these trunks as baggage?

A. I have not. There was a time—I will say this, I got it through the newspapers—there was an objection by the railroads

centering in Chicago, or a certain number of them, but I never knew any of them except the Northwestern to refuse to check baggage at any time; they don't do that now.

109 Q. State about the Northwestern Railway Company.

A. They required a bond—in fact, wouldn't check baggage without it, I think—of 10,000 dollars to hold them harmless in case of damage to these goods.

Q. Required a bond?

A. Yes, sir.

Q. Did you give a $10,000 bond to the Northwestern Railway Company?

A. No, sir.

Q. Any other railway require a bond, so far as you know?

A. I went to see the St. Paul Railway Company here who had a bond. They told me at the general office when I went to see about it—they told me they were not using them; they gave permits to travel on the St. Paul to each traveling man. They told me at the office that they found the bonds were not held good by the solicitor; that they were worthless; that was the reason they gave them up.

Q. Had you any acquaintance with this particular Wabash railroad in reference to checking jewelry trunks on their road?

A. No; I had not; I knew from my brothers that they always checked the baggage; they never reported any express charges.

Q. Did you receive back from Mr. Fisher from Petersburg the debris or stuff taken from the wreck of that train that had your trunk in it?

A. Yes, sir.

Q. Was it sealed up when you got it?

A. I think it was; I know it was sealed by Fisher's seal.

Q. What did you do with it?

A. I opened it.

Q. What did you do with the stuff you found in there? What condition was it in, what there was of it?

A. It was a mass of partially burned, partially melted, jewelry, with clay, leaves, and stuff, as it was put in. I separated it

110 as much as possible, and selected what I thought could be repaired and made salable in any way; the balance I took to the Chicago Refining Company and sold it for old metal.

Q. Have you given credit on the bills offered in evidence by your brother for the stuff sent back to you?

A. No; I had not received the package at that time.

Q. How much did you realize from that?

A. From all the goods, from the refining company, $612. I didn't get that package from Petersburg for some weeks afterwards. I instructed them to hold it until I had made a demand on the railroad company. I didn't want it till I saw what they were going to do about it. I got it early in April.

Q. How much did you realize out of that?

A. I got $612 from the refining company.

Q. Of goods that were melted?

A. Gold and silver of all kinds.

Q. What else did you do with what remained?

A. I selected some stuff and sent to the manufacturer—the particular articles that I selected that I thought could be put in salable condition—and had it repaired to as great an extent as possible.

Q. We want to know what credit we are entitled to on account of the jewelry you had repaired?

A. I don't consider it worth anything over what it cost. I paid $55 for it *for* three different manufacturers. The stuff came back, and was repaired probably as well as it could be upon that class of goods. It wasn't salable and never was. We got something for it. It was mostly plated—vest chains and such things. I am very certain we never realized any more than what we paid for the fixing. The plating was largely solder, and the solder of the
111 links would be black where it was repaired always. I laid the repaired jewelry in with the other goods, but we couldn't sell it for regular price.

Q. The price put down on this schedule for these goods. State whether or not that was the market price for these goods at the date of this accident.

A. It was.

Q. The jobbing price?

A. Yes, sir.

Q. Less than retail price?

A. Certainly; three-fourths; and it is the standard price of the goods.

Q. Was the price everywhere throughout the country the same?

A. It was substantially the regular price. There may have been cuts on some, but that was the standard price.

Q. That was the market price?

A. Yes, sir.

Q. It has a market price, the same as cotton and woolen cloths?

A. The standard manufacturer has his goods held at a certain price all the time unless changes may occur from season to season.

Q. The jobbers have their prices?

A. The jobbers' prices are fixed very largely by the price put on the goods by the manufacturer and the discount to the trade made by him. That is the foundation of both prices.

Cross-examination by Mr. BURNETT:

Q. Mr. Perry, do you know of any railroad in this country that you could go to with a trunk and say, "Here is a trunk containing $10,000 worth of jewelry—I want a check," and get a check for it?

A. I am not acquainted with any such road.

112 Q. You don't know of any such road?

A. No, sir.

Q. What is the cost price of this jewelry to you—how much did it cost you? Approximate it.

A. I can give you the exact figures and the net cost to us. I have it in a book.

Q. Have you looked it over?
A. I have it here now.
Q. What did that cost you?

(Witness refers to a book.)

Q. Each trunk of jewelry sent out, a book account is kept of that and purchases and sales, and we keep the stock of goods throughout the country——

Q. What was the cost of that?

A. The cost of it, $8,139.92 of stcok, as it started out the 21st of January.

Q. That was what it cost you?

A. That was what it cost us from the manufacturers. They cost more than that when they are ready to sell.

Q. That is what it would cost you to replace it?

A. It would have cost a good deal more to replace that amount of goods from 50 to 60 manufacturers. It couldn't be done in a day or a week or in 3 months hardly.

Q. Tell us what it would cost to replace it.

A. I can't estimate it. There is a bill which would have shown if they had been sold.

Q. How much was sold before it started from Springfield—how long had he been out on the road?

A. I have the book giving the sales. I will show you how the business is done. There is a triplicate book. Each blank gives three pages of the same impression; one is left with the cus-
113 tomer; one remains in the book; the other is sent to the house. This is carried by traveling men.

Q. What is the date of the checking of that date?
A. 21st of January.
Q. Tell us how much you sold.
A. I have the book to show.
Q. Give the gross amount.
A. The sales were $408.88.

Redirect examination:

Q. You said you didn't know of any road that would receive a trunk if a man would say it contained $10,000 worth of jewelry. Did you ever know of a railroad refusing to check a jewelry trunk?

A. No; I did not.

Q. You said you traveled on all roads from Chicago and that you never knew of a railroad on which you would have to give bond?

A. I am in the office myself; never was on the road.

Q. I understand these figures on this bill represent the actual money these goods cost you that you paid for them?

A. Yes; it is the price they are billed to us from the manufacturer—the net price.

Q. To get the real cost you would have to take into account your services, the packing, making, the insurance, and the price or money you paid to get at the real cost of these goods?

A. It certainly does.

Q. And that is what helps to make up the price you have given as the market value of the goods?

A. That is what I thought they were worth at that time; they were worth more than that to us.

Q. I understood you to say it would have taken some
114 months to replace that stock of goods and the time occupied in replacing them was so much loss to you?

A. It would take months to replace that stock of goods, but the stock of goods came from 50 or 70 manufacturers. To make a full selection, to make that amount to sell from, it takes some time to do it. I don't think months, but some time.

Recross-examination:

Q. You sold these goods at a profit?

A. Yes, sir.

Q. That is the way you make your money?

A. Yes, sir.

Q. Sell them for more than you give for them?

A. We don't make any money out of them — all.

By Mr. TUTHILL: These goods are sold on pretty close margins and conducted on close margins.

A. It isn't large. Some goods are sold for nothing, to speak of; gold chains, too, sell for nothing much; watches, 15 %; small plated goods run 10 to 30 per cent., being the average up to 25 cents; and to have to pay a railroad company for traveling with them there would be no profit.

By Mr. BURNETT; You don't pay for transportation?

A. Perhaps 75 traveling men from Chicago, alone, with trunks——

By Mr. TUTHILL: How many do you suppose there are in the United States?

A. I don't know. I am allowing for Chicago, I think, probably more than that in Chicago. In the history of the trade in this country this is the first trunk that was ever destroyed in the trade from Chicago.

Adjourned to October 20th, 1886, at 10 o'clock a. m.

115 OCTOBER 20TH, 1886.

Counsel present as before.

CHARLES MELVILLE, being first duly sworn, testified on behalf of receivers as follows:

By Mr. BURNETT: Where do you reside?

A. Jacksonville, Illinois.

Q. What is your business?

A. Road master on the Wabash, St. Louis & Pacific road.

Q. Over what portion of the road does your jurisdiction extend?

A. At present, from Jacksonville to Hannibal and Pittsfield.

Q. What business were you engaged in on the 30th of January, 1885?

A. I was road master of the three branches running into Havana

from Jacksonville to Peoria and Havana to Springfield and Havana to Sidney.

Q. What is the line from Havana to Springfield called?

A. Springfield Northwestern.

Q. What were your duties as road master?

A. Well, to look after the road, after the interests of the track and men working thereon; see that they did the work properly in a workmanlike manner.

Q. How often did your duties require you to go over the line?

A. As often as possible to get there; generally made it my business to go over it 3 times a week.

Q. Was it part of your duty to familiarize yourself with the condition of the track?

A. Yes, sir.

Q. Did you do that?

A. Yes, sir.

Q. Do you remember the accident which occurred near
116 Petersburg on the 30th of January, 1885?

A. Yes, sir.

Q. Were you there at the time it occurred?

A. No, sir.

Q. Were you there subsequently; and, if so, how soon after it occurred?

A. Well, I was there probably—I can't state exactly—2 hours or two hours and a half after the accident occurred.

Q. Did you examine the ground there for the purpose of ascertaining the cause of the accident?

A. Yes, sir.

Q. What did you ascertain the cause to be?

A. Broken rail on the high side of the curve.

Q. What was the state of the weather at that time?

A. Well, sir, it was very hard frozen weather.

Q. How long have you been railroading?

A. About 21 years.

Q. State whether or not the rails are liable to break in cold weather.

A. Yes, sir.

Q. Well, does that apply to a first-class road as well as to roads of other classes?

A. Yes, sir.

Q. Were there many broken rails in your division that winter?

A. Yes, sir; a good many; not a good many on that division; not as many there as there was on other parts of my division.

Q. Did you know of rails being broken on other lines of road?

A. Yes, sir.

Q. During that winter?

A. Yes, sir.

Q. What roads?

A. I mean of our own line.

Q. Now, Mr. Melville, you are familiar with the railroad track, are you?

A. Yes, sir; I believe so.

Q. Has your business during the 21 years been in looking after and caring for tracks?

117 A. No, sir; not altogether. It has been track-work, from grading to taking care of sections.

Q. Well, as road master it is your duty to examine the track carefully?

A. Yes, sir.

Q. For the purpose of ascertaining its condition?

A. Yes, sir.

Q. Will you state what the condition of this track was prior to the accident at the place where it occurred?

A. The place where the accident occurred and in the neighborhood of it it is full of curves and, according to the state of the balance of the track, we considered that about the best track we had, at the Petersburg hill.

Q. What was the condition of the track—was it good or bad?

A. It was good; good condition; good, safe condition.

Q. Were you on that line on the 28th of May, 1884, at the time the receivers were appointed?

A. Yes, sir.

Q. What was the condition of the track on the 30th of January, 1885, as compared with its condition at the time the receivers were appointed?

(Objected to as immaterial.)

By the MASTER: It may go in subject to the objection.

Q. Was it better or worse?

A. Well, I should consider it better; in better condition than it was the year previous. We had had more material to work with.

Q. Were there any rotten ties at this place?

A. Yes, sir.

Q. Well, how many? Just describe how they were located.

A. Well, I couldn't say how many, but we make it a business, and did it there as well as all other places, of putting our ties in to make the track safe and mix among the bad ties. We mix the good ones, say, from 3 to 5 ties to the rail length each year.

118 Q. State whether or not that is true of all roads or nearly all roads, as far as you know.

A. Well, the maximum way of taking care of tracks and using new ties is, as a general thing, about 5% new ties each year.

Q. Did you put in that per cent. there?

A. No, sir; we put in about 4%.

Q. What was the traffic of that road, do you know, whether large or small?

A. Traffic was very light; only have 2 trains a day each way.

Q. Do you know the running time of that train?

A. No, sir; I do not. I couldn't say the exact running time of it.

Q. Did you examine this place where the accident occurred for the purpose of ascertaining what caused the accident?

A. Yes, sir.

Q. Did you find a broken rail?

A. Yes, sir.

Q. How could you tell? Explain how you could tell that a broken rail caused the accident. See where the train went off?

A. The train went off where the rail was broken.

Q. Where the rail was broken?

A. Yes, sir.

Q. Something has been said about the spreading of the track.

A. Certainly, as a consequence, the track would spread with the weight of that train against the upper rail after the wheels came off.

Q. You say where the rail broke the wheel went off?

A. Yes, sir.

119 Cross-examination by Mr. HALE:

Q. How was this rail broken?

A. Well, I couldn't say how it was broken; suppose the weight of the wheel broke it.

Q. What way?

A. Broken in a quarter.

Q. What do you mean by that?

A. I mean we have center of a rail and quarter of a rail--just a phrase we have, according to the length of the rail—how far it would be from the end. If it was 4 feet long it would be one foot from the end. We don't designate them exact inches or feet; we call it quarter of a rail or center.

Q. It was broken near the end?

A. Yes, sir.

Q. And how far from the end?

A. Couldn't say; didn't measure it.

Q. About how far?

A. Probably 2½ feet; maybe not; maybe little less.

Q. Broken right in two, was it?

A. Yes, sir.

Q. Was it steel rail or iron?

A. No, sir; iron rail.

Q. Do you know how long that rail has been laid?

A. No, sir; couldn't tell you; haven't the history of that.

Q. Did you make a report of this accident?

A. Yes, sir.

Q. Who to?

A. Made a report to the superintendent.

Q. Who was that?

A. H. F. Clark, I think, was the name of the superintendent; won't be certain whether Clark or Armstrong; can't say.

Q. Where is Mr. Clark?

A. I don't know. He is general manager, I believe, of the M., I. & N. I think his headquarters are at Keokuk at present.

Q. What does that mean?
A. Missouri, Iowa & Nebraska.
Q. You think his office is where?
120 A. His office is at Keokuk, I think, Iowa.
Q. Is Mr. Armstrong with the company yet?
A. No, sir.
Q. Where is he?
A. In Peoria.
Q. Is he railroading, too?
A. Yes, sir; I think he is.
Q. Do you know the company he is with?
A. Toledo, Peoria & Warsaw.
Q. Isn't that one of this company's roads?
A. No, sir.
Q. How do you know that a broken rail caused the accident?
A. Because when the rail broke the next wheel had nothing to run on, probably. I could see where the wheel run off. Half the train may have went over it after it broke; can't say that at all.
Q. You don't know what caused the accident?
A. Yes, sir; must have done it, because that is what threw the wheel off.
Q. It might have been done after something else caused the train to run off.
A. Not necessarily; no, sir.
Q. Not necessarily; but might have been?
A. Might have been; yes, sir.
Q. Do you know anything about any new iron being laid on that branch from Havana to Springfield?
A. Well, not new iron, but I had three mile—little over 3 mile—of iron that came from up in this country somewhere, been laid here, never been run over. Laid it between Petersburg and Atterbury.
Q. That was west of where this accident occurred?
A. Yes, sir.
Q. What kind of a night did you say that was?
A. Night of the wreck?
Q. Yes.
121 A. Cold night.
Q. Cold night?
A. Yes, sir.
Q. Well, was it a freezing night?
A. Yes, sir.
Q. Wasn't there quantities of water about there at the time?
A. Was after the fire.
Q. Wasn't there before?
A. Yes; water in that branch.
Q. That was not frozen, was it?
A. Yes; it was frozen around it, and I don't know——
Q. Hadn't it been thawing that day?
A. Don't know but what it had some, lightly.
Q. Was not any such kind of frosty weather that day as makes rails break, was it?

A. Yes, sir.

Q. It was not if it was thawing, was it?

A. If it is thawing, yes; that is just what makes the rails break—the going and coming of the frost. The most broken rails we have in the winter is during the light thaws and freezes we have—most broken rails then, although we have broken rails in the dead frost and we have broken rails in the summ-r time. I have had them every week this year, but the most broken rails we have is in the giving and going of the frost.

Q. You are st-ll working for the Wabash road?

A. Yes, sir.

Redirect examination:

Q. I will ask you if it is not true that steel rails are more liable to break than iron?

A. Yes, sir.

Q. Steel rail is a better rail than iron rail, is it?

A. Yes, sir; I think so. At least we are very glad to get them to replace the iron.

Q. Isn't it true the better the rail the more liable it is to break?

A. No, sir; I don't think it is more liable to break. The
122 steel rail is more liable to break than the iron because the fiber is more quicker.

OCTOBER 20TH, 1886.

F. L. TOMPKINS, being first duly sworn, testified on behalf of receivers as follows:

By Mr. BURNETT: What is your business?

A. At the present time train-dispatcher.

Q. What company are you working for?

A. Peoria and Pekin Union.

Q. What business were you engaged in on the 30th day of January, 1885?

A. Assistant superintendent of the Wabash, St. Louis & Pacific Company.

Q. Where were your headquarters at that time?

A. Havana, Illinois.

Q. Was that *the* part of the Wabash road known as the Springfield & Northwestern railroad in your jurisdiction at that time?

A. It was.

Q. Were you familiar with the condition of the track between Havana and Springfield on this road?

A. In a general way only.

Q. What was its condition?

A. Well, very fair.

Q. What amount of traffic was done on that road as compared with the main line of the Wabash?

A. Well, really there is no comparison.

Q. Was it small?

A. Yes, sir.

Q. How would the tonnage of that road compare with the tonnage on the main line?

(Objected to.)

123 By the MASTER: It may be answered subject to the objection.

A. I hardly know how to answer that.

By Mr. HALE: If you don't know, say so; that is all.

A. Probably about 40 or 45 %.

By Mr. BURNETT: What was the condition of that road as a railroad, taking into account the amount of traffic done upon it?

(Objected to.)

A. I don't know as I understand the question.

Q. What was its condition, taking into account the amount of traffic done upon it?

A. It was in a fair condition.

Q. Were you at the scene of this accident?

A. After it happened?

Q. How long after it happened?

A. Well, 2 or 3 hours. I don't know exactly.

Q. Did you examine the track for the purpose of ascertaining the cause of the accident?

A. I did; yes, sir.

Q. What did you ascertain the cause to be?

A. Broken rail.

Q. What was the state of the weather at that time?

A. It was very cold.

Q. Do you know anything in respect to the liability of rails to break in cold weather?

A. Yes; I know they do break more in cold weather than at any other time.

Q. Is it a common or uncommon occurrence for rails to break in cold weather?

A. Quite common.

Q. Do you know the condition of this road at the time the receivers took possession, on the 20th of May, 1884?

124 A. No, sir.

Q. Not on the line?

A. Not on that line at that time.

Q. When did you go on the line?

A. About the first of October, 1884.

Q. What was the condition of that track at the time of the accident as compared with its condition at the time you went upon the road?

A. Well, I think the track was improved.

Q. Do you know the running time of that train between Springfield and Petersburg at that time?

(Objected to.)

Q. Do you remember now the running time?
A. Not exactly.
Q. Here is a time-card with your name attached to it; refresh your recollection. I will ask you if that is the time-card of that train at that time—official time-card?
A. Yes, sir; it is.
Q. That and other trains?
A. Yes, sir.
Q. What was the number of that train?
A. Number 202.

It is stipulated by counsel that instead of putting in the entire exhibit the witness may state the distance from Havana to Springfield, as shown by the time-card, and the running time for that distance for this train, and that this may go in instead of the time-card and with the same effect, no objection being waived.

A. The distance was 47 miles and $\frac{2}{10}$; running time between Havana and Springfield, 2 hours and 15 minutes, as shown by the time-table.
Q. What was the last station on the line before reaching Petersburg?
125 A. Tice.
Q. This accident occurred between Tice and Petersburg?
A. Yes, sir.
Q. What is the distance from Tice to Petersburg?
A. Four miles.
Q. What is the running time between Tice and Petersburg?

(Objected to.)

A. Ten minutes.

Cross-examination.

By Mr. HALE:

Q. How do you know a broken rail caused that accident?
A. There is no other evidence that anything else caused it.
Q. Wasn't the track spread apart, or out where the train ran off the track?
A. No, sir; not at the break of the rail.
Q. It was not?
A. Went out just below that.
Q. It was spread out where the train went off?
A. From the broken point of the rail down.
Q. Spread out where the train went of?
A. Well, pretty hard to tell. The rail was loose; couldn't tell whether it was spread or not where it was broken.
Q. If the rail had been loose it would have been more apt to be broken, wouldn't it?
A. Yes, sir.

Q. And this accident might have been caused by the spreading of the rails, if the rail had not been broken?

A. I think so.

Q. If the rails had been spread out apart?

A. Wouldn't be apt to have broken the rail if it did.

Q. Without breaking the rail, it might have occurred by spreading the track, mightn't it, the accident?

126 A. Such things can occur; yes, sir.

Q. You say that track was in fair condition. Taking into account the amount of traffic, wasn't that about the worst piece of railroad track that is in the State of Illinois?

A. No, sir.

Q. Do you know what sort of repairing had been done on that track previous to that accident?

A. No, sir.

Q. Nothing about it at all?

A. No, sir; I don't know.

Q. Do you know how the thermometer stood that night?

A. No, sir.

Q. You say it was very cold; do you mean very cold for the month of January or very cold for the month of July?

A. For the month of January.

Q. Did you see any water around that night?

A. Right in that immediate vicinity there was; yes, sir.

Q. Wasn't there any water anywhere around soft ground?

A. No, sir; except where the fire was.

Q. I mean naturally; I don't mean——

A. No, sir; not that I saw.

Q. You didn't see any?

A. No, sir.

Q. Hadn't that been really a very mild and moderate day for that time of year before that occurred?

A. No, sir; I think not; although my recollection is that it was a pleasant day, but still very cold.

Q. How is it that you remember the weather so well?

A. Because I was down there.

Q. You went down there?

A. I went down there; yes, sir.

Q. What calls the condition of the weather to your attention?

127 A. I had to keep moving around to keep myself comfortably warm.

Q. That would be so almost any day in January, wouldn't it?

A. No, sir; not in this climate.

Q. What makes you think that this track was greatly improved from October, 1884, to January, 1885? Why do you say that? You say you don't know anything about the improvements.

A. Only in a general way. I noticed ties were being put down on that piece of track; work what was being done on it.

Q. How do you know about that?

A. By passing over it every 2 or 3 days.

Q. Didn't accidents occur frequently on that road? I mean minor accidents, such as trains getting off the track.

A. No, sir.

Q. Did you report this accident?

A. I did.

Q. To whom?

A. Mr. Armstrong, superintendent.

Q. When did you report it?

A. I telegraphed that same night, and within the next day or two, I think, by letter or by reports.

Redirect examination:

Q. In case of an accident of this kind you examine for the purpose of ascertaining the cause of it, don't you?

A. Yes, sir.

Q. You ascertain from the physical condition of the track what caused it?

A. Yes, sir.

Q. After an examination of this ground you came to that conclusion?

A. Yes, sir.

Q. Broken rail?

A. Yes, sir.

128 Recross-examination:

Q. How much of an examination did you make that night?

A. Well, I went up there and looked it over very carefully.

Q. Who was there when you went there?

A. Mr. Melville. You mean at the wreck?

Q. Yes.

A. Well, I couldn't say; section men were there, quite a number of them.

Q. Was Mr. Melville there?

A. Mr. Melville went with me.

Q. Were the section men there before you got there?

A. Yes, sir.

Q. Do you remember who they were?

A. I do not; except the foreman.

Q. Who was he?

A. His name was Tim. Hanlon, I believe.

Q. You didn't know what had been done there before you got there, of your own knowledge?

A. No, sir.

By Mr. BURNETT: You got there about how long after the accident?

A. Between 2 and 3 hours.

129 CHARLES MELVILLE recalled by Mr. BURNETT:

Q. What was the length of the section in which this place of this accident was embraced?

A. Little over six miles.
Q. How many men were employed on that section?
A. At that time 4 men and foreman.
Q. What were their duties?
A. Working on the track and taking care of it.
Q. Go over the track?
A. Yes, twice a day that time of the year.
Q. The whole length of the track?
A. Yes, sir.
Q. Keep it in shape?
A. Yes, sir.
Q. State whether or not that is the usual number of men for that distance.
A. No, sir; we have less men than that now.
Q. You have less men?
A. Yes, sir.
Q. Is that a sufficient number to take care of the track?

(Objected to.)

Q. State whether or not it is.
A. For the traffic there that was sufficient at that time of year—in the winter.
Q. Who was the section for-man?
A. Timothy Hanlon.
By Mr. HALE: They don't run any passenger trains over that track now?
A. I don't know what they run there now; I am not there.

130 OCTOBER 20TH, 1886.

JOHN NORTH, being first duly sworn, testified on behalf of receivers as follows:

By Mr. BURNETT: Where do you live?
A. Live in Athens.
Q. What is your business?
A. Farming, now.
Q. What business were you engaged in on the 30th of January, 1885?
A. Bridge foreman of that——
Q. On this line down where the accident occurred?
A. Yes, sir; Havana to Springfield.
Q. Where were you at the time of the accident?
A. I was in the smoking car.
Q. You were on the train?
A. Yes, sir.
Q. At that time you were foreman of the bridge gang?
A. Yes, sir.
Q. This accident occurred near the bridge?
A. Yes, sir.
Q. Did you have in your employ a man by the name of Johnson and his son working?

A. Yes, sir.

Q. Mr. Johnson testified as a witness here the other day in regard to having worked upon that bridge. Will you state the time when he worked there?

A. That trestle was fixed in 1882; my books show; and I don't think we did any work along there for 2 months previous to the wreck.

Q. Previous to the accident?

A. Working at the time at Cantrell.

Q. Was that where the bridge gang were at work, Cantrell?

A. Yes, sir; working that day, I think, on a depot building there.

Q. What experience have you had in railroading?

A. I was railroading for about 10 years.

131 Q. In what capacity?

A. Well, last seven years I have been foreman for the Wabash.

Q. Bridge gang?

A. Yes, sir.

Q. What did you do before that?

A. I worked as a hand on the pile-driver.

Q. Did you examine this track with the view to ascertaining the cause of this accident?

A. Yes, sir.

Q. When did you examine it?

A. That night; took a lantern and went back and examined the track.

Q. Did you determine in your own mind what the cause of it was?

A. Yes, sir.

Q. What was it?

A. Broken rail.

Q. Did you pass over that track frequently?

A. Yes, sir.

Q. How often?

A. Well, we might average from 2 to 3 times a week; perhaps oftener.

Q. How would you pass over it?

A. Hand car; sometimes went afoot.

Q. Did you take notice of the track as you went along?

A. Yes, sir. Any bad place in the track that I noticed I generally reported it.

Q. What was the condition of the track, taking into consideration the amount of traffic on the road?

A. Fair. I consider where the train went off the track was as good a piece of track as there was from Tice to Petersburg.

Q. Were you there on the 28th of May, 1884?

A. Yes, sir.

Q. What was the condition of that track at the time of the accident as compared with its condition at the time the receivers took possession?

(Objected to.)

132 A. The track was in better condition; had more material to work with after the receivers took hold of the road than we did before.

Cross-examination by Mr. HALE:

Q. Material had been pretty scarce before the receivers took possession?

A. Yes, sir—well, we had some material, but not as much till——

Q. Never got as much as you wanted at any time?

A. After the receivers took hold of the road we had about all we could use for some time.

Q. All you wanted?

A. Had all the bridges in good shape when I left the road.

Q. Bridges in good shape?

A. Trestle-work good.

Q. What made you think a broken rail caused this accident?

A. Well, my idea of it is this: As soon as the engine passed over the rail it broke the rail, and the engine trucks—hind trucks of the tender, I should say—I think went off first—struck the blunt end of the rail, and as soon as it struck the end of the rail I think it went off. I think it would be liable to go off on the inside as on the outside; but that rail being broken, it will stick up above the others; and a rail being that way—broken end of a rail on a curve on the outside—if the rail was broken on the outside I consider it would go off on that side without reference to the track spreading.

Q. This broken rail was in the curve?

A. Yes, sir; as you strike the curve.

Q. Had they crossed the bridge before they came to it?

A. Before they came to the bridge. I think where we put the bridge—the trucks of the tender were on; they were on the trestle or over the trestle.

133 Q. Did you notice any of the ties near this place?

A. Yes, sir.

Q. Good many rotten ones?

A. Well, I couldn't say. There were some rotten, but some good ties in there.

Q. Good many spikes been pulled out?

A. At that time, when we got off, of course the rail was loose and, of course, was turned over; the consequence, of course, the spikes would be, some of them, gone, some pulled out, and some broken off.

By Mr. BURNETT: You saw a broken rail there?

A. Yes, sir.

By Mr. HALE: How was it broken—where?

A. I should judge at the quarter of the rail.

Q. What do you mean by that?

A. We call center of a rail and quarter of a rail. That would be a quarter from the center—near the end.

Q. Near one end, was it?

A. It was on the end from the engine, I guess. It was going south. That would be north—the end the engine struck first.

Q. That would be the east end—the end towards Springfield?

A. Yes, sir.

134 OCTOBER 20TH, 1886.

H. G. GRANNEMAN, being first duly sworn, testified on behalf of receivers as follows:

By Mr. BURNETT: What is your business?

A. My business is general foreman.

Q. Of what?

A. Car department of the Wabash road.

Q. Were you in that business in 1884 and 1885?

A. Yes, sir.

Q. Do you know this baggage car that was in the wreck near Petersburg on the 30th of January, 1885?

A. Yes, sir.

Q. How long before that accident had you seen that car?

A. Well, nearly every day. It is my business to go up every day to those cars. Sometimes I am off and if there is anything wrong these men that work in there report it.

Q. Had that car been reported a short time before that?

A. Yes, sir.

Q. How long before?

A. About 2 months.

Q. Who had charge of the repairing of it?

A. I had some. It was not repaired in Springfield; it was repaired at K.

Q. Not under your——

A. No.

Q. Did you see it soon after it was repaired?

A. Yes, sir.

Q. How long was that before this accident that it was repaired?

A. About two months.

Q. What shape was it put in?

A. In good shape.

Q. How long before the accident did you have occasion to examine it or know anything about it?

135 A. Well, that may have been the same day. When I am at home it is my duty to go up to the depot and go through those cars every day.

Q. What was the condition of that car at that time?

A. It was in good condition.

Q. What was the condition of the stove in it?

A. The stove was in good condition, except one in the mail car. It had a small crack below; that was in a fair condition and bolted down for safety.

Q. Such a stove as is usually carried on trains?

A. Well, yes; small-sized stoves they were.

Q. What do you call it, barrel stove?

A. Yes; kind of a barrel stove.
Q. There was a small crack in it, you say?
A. Small crack in the bottom. There are four parts to the stove, 2 top and 2 bottom; kind of in the center, and this was down below.
Q. Down below what?
A. Down below in the lower part.
Q. How did that crack affect the safety of the stove?
A. Didn't affect anything; not a bit. It was perfectly safe; if it wasn't, would take it out and put in another.
Q. Was the stove fastened to the car in any way?
A. Yes, sir.
Q. How?
A. Bolted.
Q. Those stoves are in several pieces, are they not?
A. Four parts.
Q. And when they are turned upside down what is the effect?
A. Sometimes they get loose on account of—when they are not burned up don't get loose. Never saw one. I have picked
136 up hundreds of wrecks and picked up this one, but when the car burns up everything goes to pieces, floor gives way, and the whole gives way.

Cross-examination by Mr. HALE:

Q. A stove that is cracked a little is more apt to break than one that isn't?
A. It is when it is cracked enough.
Q. If it is cracked at all it is more apt to break than a sound one?
A. I don't know.
Q. Don't you think so, as a handler of stoves?
A. That depends on circumstances.
Q. Don't you think that a stove that is cracked is more apt to break than one that is not cracked?
A. If it is cracked enough it is liable to break.
Q. If it is cracked enough it will fall apart?
A. Yes, sir.
Q. If it is cracked less than that it is more apt to break than one perfectly whole?
A. That depends on circumstances.
Q. The same stove cracked is more apt to break than the same stove whole would be, isn't it?
A. I don't know.
Q. Don't you think so?
A. I believe when a stove is cracked that far it is apt to break; when it gets a crack it must fall to pieces.
Q. What would be your judgment about when a stove was cracked too far?
A. This one of——
Q. No; but when is a stove cracked too far?
A. When it is getting about to pieces, I suppose.

Q. When it falls to pieces?
A. Yes, sir.
Q. That is too far?
A. Too far.
Q. You wouldn't recommend using it, then?
A. No, sir; would take it right out.

Adjourned to some time to be agreed upon.

137 *Testimony on Behalf of Intervening Petitioner.*

DECEMBER 8TH, 1886.

Counsel present as before.

LINCOLN BUSHONG, being first duly sworn, testified on behalf of intervening petitioner as follows:

By Mr. TUTHILL: Please state your name.
A. Lincoln Bushong.
Q. Your age?
A. 26 years old, past.
Q. Where do you live?
A. Live in Petersburg, Illinois.
Q. What business are you engaged in?
A. Working in the coal mines at the present time.
Q. What business were you engaged in on January 30th, 1885?
A. Working on a section for the Wabash Company.
Q. How long before that had you been working for that company on that section?
A. About 15 months.
Q. You continued to work for them after this accident?
A. Yes, sir; worked for them quite awhile.
Q. How long?
A. Never kept any dates; don't just remember.
Q. Were you working over this division where this accident happened in the latter part of January, 1885?
A. Yes, sir.
Q. Near the creek there?
A. Yes, sir.
Q. Do you know where the baggage car was burned?
A. Yes, sir.
Q. That was the section you were working on, was it?
A. No, sir; on the section north of that. I was called out there that night.
Q. Were you at the scene of the accident that night?
A. Yes, sir.

Q. How did you come to go there?
138 A. The conductor and brakesman of the freight train that was side-tracked there by my house was talking to me at the gate and saw the fire from the house.
Q. How far is your house from the place?
A. About 2 miles. He says, I believe the passenger train is

turned over and burning. Then just as he said that the engine of the passenger train went to calling for help, and the conductor and brakesman and myself got on the engine and went up to the wreck.

Q. That is, the freight engine that was standing there by your house?

A. Yes, sir; the freight engine.

Q. You got on that?

A. Yes, sir.

Q. The conductor, brakesman, engineer, and yourself?

A. Yes, sir.

Q. Were you the first ones there after the accident?

A. Yes, sir; first ones there, excepting a few from the country—country folks that lived over the hills right near by.

Q. Were you familiar with that track there before that time?

A. Yes, sir.

Q. Where the accident happened?

A. Yes, sir.

Q. Just state what was its condition.

A. The track just to look at it at a glance would look like in good condition, but it was not, on account of rotting ties; ties were rotten and wouldn't hold spikes.

Q. To what extent were there rotten ties there?

A. To a great extent; scarcely any sound ones at all.

Q. To what extent were they rotten—how much of the ties?

A. Rotten right under the rail.

Q. Rotten right under the rail?

A. Yes, sir.

Q. Were the ties cut in two by the rail?

A. Partly; yes, sir.

Q. How do you know the spikes wouldn't hold in these ties?

139 A. Because that night after we got there to replacing the iron back again we had to put in new ties to put it in a gauge.

Q. Did you try the old ties to see whether the spikes——

A. See that with the eyes, because the ends were broken off—ends of the ties.

Q. Ends were broken off?

A. Yes, sir.

Q. Did you help to replace that track that night?

A. Yes, sir.

Q. State whether or not you saw any broken rail there.

A. There was none at all.

Q. There was none at all?

A. No, sir.

Q. Did you put back the old rails in the track there?

A. No, sir; we got straight rails in place of them.

Q. Why didn't you put the old rails back?

A. Because they were bent so; would take too much time in straightening them.

Q. Did you examine any rails so that you could see whether it was broken or not?

A. Yes, sir.

Q. Could you at the same time see whether they were broken or not?

A. Yes, sir.

Q. Was there any broken rail there?

A. There was none.

Q. What degree of temperature was it that night?

A. Pretty cool.

Q. Pretty cool?

A. Yes, sir.

Q. How had it been during the day?

A. It had been pleasant during the day; probably thawing a little, too.

Q. Did you notice whether there was water there in the stream?

A. Yes, sir; running water there most all the time—spring water.

Q. What was the cause of the accident there?

A. Track spreading.

Q. The track spreading?

A. Yes, sir.

Q. How did the track happen to spread—how could it spread?

A. By being on the curve, and caused by the rotting ties.

140 Q. And the spikes not holding in the ties?

A. And the spikes not holding in the ties; yes, sir.

Q. You said you helped replace the rails there?

A. Yes, sir.

Q. Did you hear anybody say that there was a broken rail?

A. Not at all.

Q. Did anybody speak about a broken rail there at that time?

A. Heard no such talk.

Q. There was no broken rail there, in fact?

A. No broken rail at all.

Q. Did you see John M. North there that night?

A. Yes, sir.

Q. What was he doing there?

A. He was on the passenger train that turned over there, going home, I suppose.

Q. What did you see him do there?

A. He was getting on the engine as I got off—when I first went up there; seemed to be kind of bruised up.

Q. Making complaints about himself being hurt?

A. Yes, sir; complaining about being bruised—ankle sprained, I believe, was his complaint.

Q. Did he get on the engine that you came up on?

A. Yes, sir.

Q. And went away?

A. Went back to town.

Q. Back to Petersburg?

A. Yes, sir.

Q. And he was not there when the rails were relaid?
A. No, sir.
Q. Did you at any time that night hear anybody say or speak of a broken rail, the accident having been caused by a broken rail?
A. No, sir.
Q. Such a word was not uttered on that occasion?
A. No, sir.
141 Q. There was no broken rail there at all?
A. No broken rail there at all.
Q. Was there any moon that night?
Q. Yes, sir; very nice night.
Q. Any firelight there?
A. There was fire there from the wreck—burning cars.
Q. Still blazing when you got there?
A. Yes, sir.
Q. To what extent did it light up that locality—the moon and the fire?
A. Didn't light a great ways around there, as the wreck was down in the ditch from the track.
Q. What kind of a moon was it—full moon or——
A. I think it was; wouldn't be positive.
Q. It was bright, then, so you could see the rails and track and everything?
A. Yes, sir; needed no lantern at all till towards morning.
Q. Not till the moon went down?
A. No, sir.
Q. Did you use a lantern there in repairing the track?
A. Sometimes we used it when right close at work in coupling—joining together.
Q. But generally, for picking the rails up, moving around, seeing where the rails were, putting them in place, you didn't need any lantern?
A. No, sir.
Q. The moon was so bright?
A. Yes, sir.
Q. Where did you get the new rails from?
A. At a little station southeast of there—Tice station, name of the place.
Q. How far from there?
A. About two miles.
Q. You say Mr. North was making a good deal of complaint about being hurt himself?
A. Yes, sir.
142 Q. That seemed to be the principal burden of his trouble?
A. Yes, sir.
Q. About his own injury—did you see a stove there in the wreck?
A. No, sir; I never noticed the stove.
Q. Didn't notice the stove?
A. No, sir.
Q. Did you see a man by the name of Melville?

A. Yes. He came in the later hours—after I came—after the wreck.

Q. What time was it when Mr. Melvills got there?

A. I don't really know just what time it was. We had the track sufficiently in repair when he came.

Q. He had to come about 50 miles to get there?

A. No, sir; not that far.

Q. Who is Mr. Melville?

A. He is road master of that division.

Q. Did you hear him say anything about a broken rail there that night?

A. No, sir.

Q. Did you talk with him?

A. No, sir.

Q. Did you hear him talk?

A. Yes, sir; could hear him talk.

Q. Did you hear him speak of the cause of the accident that night?

A. No, sir; I don't believe I did. His talk was generally to the foreman.

Q. What was done with the bad rails that were left there that you didn't use?

A. Left them laying where they were—that is, our gang; suppose the other gang picked them up afterwards.

Q. How far did the cars run after they got off the track; could you tell from the place the wheels struck the ties where it got off the track first?

A. Yes, sir.

Q. How far did they run from that place till they stopped?

143 A. They run probably a rail length; not more than a rail length.

Q. How many rails were there bent to such an extent that you didn't use them again?

A. Three, I think.

Q. Three rails?

A. Three rails.

Q. And you swear positively that neither one of those rails was broken?

A. Yes, sir.

Cross-examination by Mr. BURNETT:

Q. You didn't work on that section?

A. No, sir; not as a day laborer; not on that section.

Q. In any other capacity?

A. Yes; in case of an accident of that kind I was called out.

Q. Had you ever been there before that time, that particular place, to examine the track before that night?

A. Examine it particularly?

Q. Yes.

A. No, sir; not very particularly to examine it.

Q. Then what you saw of the track you saw that night after the accident?
A. Yes, sir.
Q. Who was your section foreman?
A. Charles Wendell.
Q. Charles Wendell?
A. Yes, sir.
Q. Do you know Timothy Hanlon?
A. Yes, sir.
Q. Was he there that night?
A. Yes, sir.
Q. Is he a section foreman?
A. Yes, sir.
Q. Was he there before you got there?
A. No, sir.
Q. How long after you got there?
A. But a few minutes. The engine run back to town and brought the whole gang.
144 Q. Didn't you go down with the same train as Hanlon?
A. No, sir.
Q. What other section foreman was there besides Wendell and Hanlon?
A. The Athens section foreman came down.
Q. What is his name, Wallace?
A. No, sir; that is not his name.
Q. Do you remember his name?
A. It is not a very familiar name to me.
Q. Those section foremen would be likely to know what caused the accident as you would, wouldn't they?
A. I should think they ought to.
Q. What experience had you had in railroading at that time?
A. I had been working on it a couple of years.
Q. Was it any part of your business to ascertain what caused the accident?
A. It was a great interest to me to know.
Q. You went down there simply to clear the wreck and fix the track?
A. Yes, sir.
Q. And the duty of ascertaining what caused the wreck devolved upon the section foreman and road master, didn't it?
A. It is their duty to do so; yes, sir.
Q. And your duties were simply to repair the track; you hadn't anything to do with ascertaining what caused the accident?
A. It was not a point of duty on me to do so, but——
Q. It was the duty of the section foreman to ascertain what caused that accident and repair it?
A. That was his duty; yes, sir.
Q. You didn't make any reports?
A. I made no reports to the road master.
Q. You were simply employed there to do such work as you were

directed to do. Now, these rotten ties, were they rotten clear
145 through or just on the outside?

A. Clear through.

Q. Did you examine them clear through—bore into them?

A. No, sir.

Q. How do you know they were rotten clear through?

A. By eyesight.

Q. See through them?

A. No, sir; couldn't see through them; see they were rotting.

Q. They were rotting?

A. Yes, sir.

Q. How could you tell they were rotten clear through?

A. Because they looked the same through as on the outside.

Q. Were they broken off?

A. Broken off; yes, sir.

Q. In two, by the action of the engine running over the ties?

A. The jar that came against then endways where the track was spreading pushed them right off.

Q. Did you ever see any ties that were rotten on the outside on any other road in your life?

A. There is more or less.

Q. Rotten ties on every road?

A. Yes, sir; few.

Q. How long was it after the turning of the car that you got there?

A. About a half hour.

Q. What time did you leave there that night?

A. Didn't leave there till morning.

Q. Didn't leave till morning?

A. No, sir.

Q. Who was there when you got there?

A. Few country folks and the trainmen of the burning train.

Q. Any section men there at all?

A. No one there; no, sir.

146 Redirect examination:

Q. Who helped, besides you, in putting back the track there—laying new?

A. Charles Davis, Jerry Berry, Lije Watkins, Jack Watkins, Thomas Goldsby.

Q. They section men?

A. Yes, sir.

Q. I thought you said to Mr. Burnett there were no section men there.

A. You asked me who repaired the track—put in the new rails.

Q. These men got there after you did, then?

A. Yes, sir.

Q. How long after you got there did they get there?

A. As soon as the engine went back to town.

Q. They went back after them and the rails?

A. Yes, sir.

Q. Whether it was your duty or not to examine and see what caused the accident, you did, didn't you?
A. I did so; yes, sir.

Recross-examination:

Q. Was Mr. Wendell the section foreman then?
A. Yes; he was my foreman.
Q. What was the first thing you did when you got there?
A. Went and looked at the track to see what was the cause of it.
Q. How long after that before you went to work?
—. A few minutes, when they came—that is, as soon as the gang came with tools.
By Mr. TUTHILL: Did you hear Mr. Wendell say anything about a broken rail there that night?
A. No, sir.
Q. You spoke here a little while ago, in answer to Mr. Burnett, of a foreman by the name of Charles Wendell?
A. Yes, sir.
Q. Do you know when he left the employ of the Wabash?
147 A. Yes, sir.
Q. When was it?
A. Left in the spring after the wreck.
Q. Do you know what his reason for leaving was; what he gave as his reasons for leaving?

(Objected to.)

By Mr. TUTHILL: I offer to prove by this witness that Charles Wendell, who was foreman on this line of road the spring succeeding the accident, left the employ of this company and openly avowed as his reason for doing so that he would not be held responsible for a track so dangerous and unsafe as that was when the company would not give him sufficient materials to make it safe.
By the MASTER: The master overrules the question on the ground that if such were the fact Mr. Wendell is the proper person to prove the fact by, and it cannot be proven by this witness, being in the nature of hearsay evidence.

148 DECEMBER 8TH, 1886.

AZRO JOHNSON, being first duly sworn, testified on behalf of petitioners as follows:

By Mr. TUTHILL: What is your name?
A. Azro Johnson.
Q. Where do you live?
A. Petersburg, this State.
Q. What is your business?
A. Mostly carpenter-work.
Q. Were you at any time employed by the Wabash road, working on the track in that vicinity?
A. I was employed at that time; yes, sir.
Q. That is, in January, 1885?
A. Yes, sir.

Q. Do you know when this accident happened—remember the time?

A. Yes, sir.

Q. Were you there at the time of the accident?

A. No, sir.

Q. How long after it happened were you there?

A. Next day following.

Q. Did you examine to see what was the cause of the accident there?

A. Yes; I looked over the track, I and the other men, to see what was the cause of the wreck.

Q. Were you then working for the railroad company?

A. Yes, sir.

Q. What did you go down there for?

A. I was going home on my way from where we were working and going into headquarters in Petersburg on a hand car.

Q. On a hand car and stopped there?

A. Yes, sir; and looked over the wreck.

Q. State what you observed there as to the cause of the accident and what your conclusion was from what you saw.

A. Looked over it and came to the conclusion that it wanted
149 ties and bed there to make a good track; on account of spreading of the track caused the accident. That was my decision on looking at the wreck.

Q. You saw the rails that had been thrown aside there?

A. Am not positive whether I saw the rails there or not; don't remember exactly whether they were there or taken away. Some iron there, but don't know whether it was used there or laid there, making up the wreck.

Q. What was the condition of the ties there at that place?

A. Very bad.

Q. What do you mean by very bad?

A. Useless.

Q. Describe what their actual condition was.

A. Well, they were just worn-out ties—rotten and worn-out ties.

Q. Now, right at the place where the rail sets on the ties, what was the condition of the tie under them where the spike would go in?

A. Probably cut half way in two, such a matter; some of the ends dropped off and moved down the dump.

Q. Had you at any time examined or noticed that track before this?

A. Yes, sir.

Q. How long before?

A. I don't know exactly whether it was early in the fall or not; don't know exactly what time it was. I helped in the bridge there within 3 rails of where the train first went off the track.

Q. Just state what you noticed as to the ties and condition of the track when you fixed that bridge there.

A. I drove the spikes into the ends after it was repaired, spiking the rail down, and for the want of spikes the men went back up the

track where the wreck was and picked up spikes by the fin-
150 gers; needed no claw-bar to pull them with; picked up a hand full and took them to the bridge and drove them in.

Q. This accident happened right there where there was a curve in the road?

A. Yes, sir.

Q. Some train passing around that curve would naturally pass with a good deal of force against the ties, would it not?

A. Yes, sir.

Q. What was the talk there among your men as to what was the cause of that accident?

(Objected to.)

Q. Could you see where the cars and locomotive went off the track?

A. Yes, sir.

Q. And you say that the cause of the accident was the spreading of the rails by reason of the spikes in the ties not holding, so the rails were spread apart?

A. Yes, sir.

Q. How long have you been working for the railroad company?

A. Off and on for the last 10 years for that company on that line.

Q. Were there any sound ties there at that place?

A. Very few.

Cross-examination by Mr. BURNETT:

Q. If there was a broken rail there and the cars went off the track it would spread the rails, wouldn't it?

A. It might.

Q. Wouldn't it, as a matter of course, when the wheels got inside of the track?

A. It would beyond that—from there on.

Q. Where it went off?

A. Yes, sir; be apt to tear the track up.

Q. How do you know there was no broken rail?

A. Don't know whether I knew or not; can't say.

151 Q. Couldn't tell whether or not?

A. No.

Q. You knew the track was spread?

A. Yes, sir.

Q. And it would have been spread if a broken rail had caused it to go off?

A. It would have torn the track up some.

Q. You didn't get there until the next day?

A. No, sir.

Q. The track was repaired then?

A. Yes, sir.

Q. Put in new ties there?

A. Well, they put in some new ties; yes, sir.

Q. In repairing the track?
A. Yes, sir.
Q. Do you know when the receivers took possession of the road?
A. No; I don't know exactly when.
Q. Do you know of any new ties being put in that track that fall?
A. Very few.
Q. Do you know how many — put in between Petersburg and Springfield?
A. No, sir.
Q. Haven't any idea?
A. Nothing about it at all.
Q. You say you helped in that bridge; how long was that before the accident?
A. How long I couldn't say.
Q. Isn't it true that you worked on that bridge a year before, and had not worked on it for a year before that?
A. No; I don't think it was so long.
Q. You say repairs were done on that bridge the fall before this accident?
A. Yes, sir; bridge was built new.
Q. Bridge built new?
A. Yes, sir.
Q. These spikes that were picked up, did you pick them up?
A. No, sir.
Q. Who did?
152 A. I couldn't say; some of the men—workmen there.
Q. Where were they lying, along the track?
A. Yes, sir; in the rotten ties.
Q. In the rotten ties that had been thrown out?
A. No, sir; picked out of the ties in the track.
Q. Did you see them?
A. Yes, sir.
Q. Go along with them?
A. No.
Q. How far were you from them?
A. 2 or 3 rail lengths.
Q. You saw them pick them out?
A. Yes, sir.
Q. Wasn't there spikes lying along the track there where they had been working, repairing it?
A. No, sir.
Q. Did you pick them out of the ties?
A. No; I didn't take them.
Q. Your men did?
A. Yes, sir.
Q. Who was the foreman of that gang?
A. John North.
Q. John North?
A. Yes, sir.
Q. Was he there at the time?

A. No, sir.

Q. Who acted when he was gone, who gave the orders to go and pull the spikes out of the ties?

A. Nobody at all; we wanted spikes and some of the men went up the track and got the spikes.

Q. How many did they take out?

A. Couldn't say how many.

Q. About how many did you see them pull out of the ties in the track?

A. Probably 15 or 20 spikes.

Q. Certain?

A. Yes, sir.

Q. Did that take about all the spikes out of the rail?

A. Would not take them all off one place.

Q. Did they leave any spikes at all there?

153 A. Yes, sir; left spikes along; didn't take them all from one place; took them out scattering where they were not doing any good.

Q. What is the name of the men who pulled out those spikes?

A. I couldn't say exactly the men there.

Q. What is their names?

A. Couldn't say exactly the men that pulled them out; I guess, Turner; probably Johnson.

Q. What is Turner's first name?

A. Walter Turner and Frank Johnson.

Q. Your father or brother?

A. No, sir; no relation whatever.

Q. Mr. Turner and Mr. Johnson pulled spikes, both of them, did they?

A. Yes, sir.

Q. John North, you say, was foreman of the bridge gang?

A. Yes, sir.

Q. Was he there the night of the accident, do you know?

A. Yes; he was there.

Q. Was he about the first man there?

A. Don't know. He was there with the rest of them when the wreck happened.

Q. What business did you say you are engaged in now?

A. Carpentering.

Q. Who do you work for?

A. For myself mostly.

Q. How many trains were being run over that road a day at that time?

A. There were four.

Q. About what time was it these spikes were taken out?

A. About a year before; the fall before.

Q. Do you know whether any repairs had been done on that track at that place between the time the spikes were pulled out and the time of this accident?

A. Probably new ties put in; one along occasionally.

Q. Were the section men going over that track every day watching it?
A. Yes, sir.
Q. Making repairs on it?
A. Yes, sir.
Q. See any train-loads of new ties thrown off?
A. Very few.
154 Q. Very few ties or very few trains?
A. Very few ties on that line.
Q. Your duty didn't call you over the track every day, did it?
A. Part of the time, if I had worked in that direction, would go back and forward.
Q. It was no part of your duty to watch the track?
A. No, sir.
Q. To see that it was reasonably safe?
A. No, sir.
Q. There were men there whose duty it was to look at that track every day?
A. Yes, sir.
Q. And keep it in repair?
A. Yes, sir.

Redirect examination:

Q. Don't you know there was constant complaint that they couldn't get ties to repair that track as it ought to be?

(Objected to.)

A. Yes, sir.
Q. I will ask you if you have heard complaints of that sort made by section bosses and foremen.
A. Yes, sir.
Q. That they ought to have more ties to repair that track and make it safe.

(Objected to.)

A. Yes, sir.
Q. For how long a time prior to this accident had you heard such complaints made by these men about the insufficiency of the supplies of ties to make this track safe?

(Objected to.)

By the MASTER: Confine yourself in answering this question to declarations or statements made by the parties who had charge of this track and within a year previous to the time of this accident.
155 A. From the time I commenced on the road during 9 or 10 years.
Q. Had you heard complaints of that sort made during the year preceding?
A. Yes, sir.

Q. How often—how frequently—by persons employed on the road taking care of that track?

A. Whenever we run across—very seldom, say.

Q. I will ask you if you remember about a foreman there who gave up the work there because he wouldn't have charge of a track that was so unsafe as that section was.

(Objected to.)

Q. Do you know a foreman that was there that left that section?

A. No; I don't remember particularly of any.

156 DECEMBER 20TH, 1886.

Counsel present as before.

CHARLES WENDELL, being first duly sworn, testified on behalf of intervening petitioner as follows:

By Mr. TUTHILL: Where do you live?

A. Decatur, Illinois.

Q. What is your business?

A. I am a painter by trade; painting now—have been.

Q. What was your business in January, 1885?

A. I was section foreman on the Springfield and Northwestern; Wabash branch it is.

Q. How long had you been prior to that time section foreman for that company?

A. 14 or 15 months.

Q. How long did you continue to be section foreman after that?

A. Until the 14th day of the next March following.

Q. State whether or not the section of which you were foreman was the section where an accident happened on the night of the 30th of January, 1885.

A. No, sir; it was not the section.

Q. Was not that section?

A. No, sir.

Q. Was it near that section?

A. It was the next section adjoining towards Springfield.

Q. When did you first hear about an accident having happened there?

A. It was in the evening—night of the 30th.

Q. Where were you?

A. I was in Petersburg, up at the depot, when I heard of the accident.

Q. How far was it from there to the place of the accident?

A. Well, I guess about two miles and a quarter; something like that.

Q. Did you do anything in reference to the accident?

157 A. Well, we waited there till the brakesman came around and told us what had happened, and then—the freight train was behind that evening. It came in and took us up there—my men and Hanlon's men.

Q. Were you sent there by anybody?

A. I can't say we were sent. As soon as we found there was an ac-ident it was our place to go. We had orders to render assistance in anything of that kind always.

Q. It was your business to go there to render assistance?

A. Yes, sir.

Q. And you did go?

A. Yes, sir.

Q. How many men did you take with you?

A. Four.

Q. What time did you get there?

A. Well, I guess between 8 and 9 o'clock we got there.

Q. Between 8 and 9 o'clock?

A. Yes, sir.

Q. Do you know a man by the name of F. Tompkins?

A. Yes, sir.

Q. Did he go up there with you?

A. No, sir.

Q. What time did he *gte* there?

A. Must have been between 10 and 11 o'clock when he got there. He and the yard master got there together.

Q. What had you done to the track when he got there?

A. We had the track pretty well repaired when they got there. We went right to work repairing the track.

Q. As soon as you got there?

A. Yes, sir.

Q. What did you do to the track?

A. We replaced the rails that were torn out, and got ties and dug out and put in good ties—spikes it up.

Q. Replaced the rails? Did you put the old rails back?

158 A. Put part of the iron back, and some was bent so they couldn't put it back; went up the hill and brought down some iron and put in.

Q. How many rails did you put in?

A. I think it was 2 likely; 1 or 2; I am not sure now.

Q. Did you examine all the rails that were affected by the accident to see whether or not they could be put back?

A. They were bent so bad——

Q. Did you examine them?

A. Yes, sir.

Q. To see whether they could be put back?

A. They couldn't have been put back.

Q. I am asking if you examined them yourself personally.

A. Yes, sir.

Q. For the purpose of seeing whether you could use the rails or not?

A. Yes, sir.

Q. Was any broken rail there?

A. Not that I could find.

Q. It was there you examined, and if the rail had been broken you would have seen it?

A. Yes, sir; there was no broken rail.

Q. The only trouble there was the rails were bent?
A. Yes, s-r.
Q. State what caused that accident there.
A. The rotten ties caused the accident.
Q. What was the condition of the tie where the accident happened?
A. Ties were bad—rotten.
Q. To what extent were they rotten?
A. They were rotten enough to let the track spread and let the train off.
Q. Did you examine the ties where the spikes were in to see what their condition was—where the spikes were?
A. Ties torn to pieces there where the rails went out.
Q. What was the condition of those ties?
159 A. The ties were bad—rotten.
Q. To what extent?
A. Too bad to hold the track together.
Q. You mean by being bad they were rotten?
A. Yes, sir.
Q. Would the spikes stick in these ties?
A. They would stick, but wouldn't hold enough to hold the track together.
Q. Where had this repairing taken place—what part of the track?
A. Right on the curve.
Q. Right on the curve?
A. Yes. sir.
Q. Just explain that—how it happened.
A. The train was coming down the hill, and when it come to this—of course, there is a long curve there, but right where the train went off the curve is pretty sharp there, and the ties being bad, of course when it struck that it spread that rail out and let the train right off, and run off on the high side of the curve and fell over in the ditch there on the side of the track.
Q. Had there been any work done there at all when you got there?
A. No, sir; we were the first men that did anything with the track.
Q. Who helped you there?
A. Tim. Hanlon.
Q. And his men?
A. Yes, sir.
Q. How many ties did you put in there in repairing the track?
A. I couldn't tell exactly. I think we put in somewhere near 20; went back twice after ties—up the hill on a hand-car.
Q. Did you find any of the old ties that were sound and good?
A. Yes, sir; there were some good ties in there; some that didn't hurt.
Q. But you had to put in how many rail lengths—put in 20 ties?
A. Little over 2 rail lengths; little over 60 feet, I think.
160 Q. How many ties in laying down a track are for a rail—a new track?

A. From 18 to 21 ties; 30-foot rail.
Q. And you put in about half a dozen ties there?
A. Yes, sir.
Q. On those 2 rails?
A. Yes, sir; very near.
Q. Did you put in all that were necessary to make it first-class and perfectly safe or only what you though- would do?
A. Fixed it up so we thought it would be safe; of course we couldn't make it first-class in the winter, the ground being frozen.

Cross-examination by Mr. BURNETT:

Q. You didn't belong on this section?
A. No, sir.
Q. Did you examine that track before this accident occurred?
A. Well, I didn't examine it; have been over the track before the accident several times.
Q. When a train runs off the track it breaks the ties, don't it, generally?
A. If the ties are inclined to be rotten it will break them.
Q. Will break some sound ties sometimes, won't it?
A. A good sound tie will hold up a car. I have seen it run off many times without breaking.
Q. When you got down there did you go over the ground for the purpose of ascertaining what caused the accident?
A. Went and examined the track; went to repairing the track.
Q. Was it any part of your business to find out and report what caused the accident?
A. I had nothing to do with the reporting.
Q. Who was the man there whose business it was to ascertain the cause of the accident and report it to the officers?
161 A. Tim. Hanlon; it was his place to report about the wreck—he was the foreman.
Q. Tompkins?
A. Mr. Tompkins was not there right at the time.
Q. The road master, was he there?
A. He was; he came with Mr. Tompkins.
Q. Was it his business to ascertain——
A. It was Hanlon's business to report to the road master and the road master's place to report farther on.
Q. Did Mr. Hanlon get there with you?
A. Yes, sir.
Q. Went down with you?
A. Went on the same train.
Q. Ever see Mr. Hanlon's report—know what he reported?
A. No; I didn't see it.
Q. Did you work for Mr. Hanlon?
A. No, sir.
Q. You don't know, then, that Mr. Hanlon reported that a broken rail caused the accident?
A. No, sir; I didn't know that.

Q. When you got down there you didn't look over the ground especially for the purpose of ascertaining what caused the accident, did you?

A. No; but we found out when we went to repair the track.

Q. How many rail lengths did that train run on the ties after it went off?

A. Over two rail lengths there where they run over the ties.

Q. Was it not over 9 rail lengths not on the ties?

A. No, sir.

Q. Was not?

A. No; I don't think there was. They run over the ties directly.

Q. How many rail lengths did the engine run after it went off the track?

A. The engine didn't go off the track.

162 Q. Well, the car—the tender?

A. The tender went off.

Q. How many rail lengths?

A. I expect it ran 6 or 8 rail lengths.

Q. These ties that were put in—new ties—were they not distributed over the whole length of where the engine ran?

A. No; the ties that were put in were put in where the rails were rotton—that is, where the ties were destroyed.

Q. Only 2 rails torn out, according to your recollection?

A. Two rails torn clear out—rolled right out. For the space of each rail, where the two were torn out, they put ties.

Q. Put the ties in there?

A. Yes, sir.

Q. How many ties are usually put into a rail length?

A. In making new track, 18 to 21 ties are sufficient to make a first-class track—30-foot rail.

Q. Put in 20 ties in the distance of 2 rail lengths and part of two others?

A. That is about right, I think.

Q. Did you count them?

A. No; I know that we made two trips after ties—had 8 or 10 ties, very easy, on the hand-car.

Q. Did you see Mr. Sullivan?

A. Yes, sir.

Q. When did he get there?

A. Came on the same train with Melville and Tompkins.

Q. When did you get the track in shape for the train to run over it—what time?

A. I don't remember exactly what time it was.

Q. Did you get back to Petersburg before morning?

A. Yes; I think we did; think we got back to Petersburg about 4 o'clock, as near as I can tell.

Q. Was the track in shape when you got back there?

163 A. Yes, sir; for the freight to go on to Springfield.

Q. You didn't see this accident?

A. No, sir.

Q. The opinion you expressed as to what caused it is formed from what you saw there?
A. Yes, sir.
Q. On the ground?
A. Yes, sir.
By Mr. TUTHILL: Did you hear anybody say anything about a broken rail there that night?
A. No, sir.
Q. No talk on that subject?
A. No, sir.

164 DECEMBER 20TH, 1886.

THOMAS GOLDSBY, being first duly sworn, testified on behalf of intervening petitioner as follows:

By Mr. TUTHILL: Where do you live?
A. Petersburg.
Q. What is your business?
A. I am working on a farm nearly all my life.
Q. What were you engaged in in January, 1885?
A. Working on the Wabash railroad.
Q. Who was your foreman?
A. Charles Wendell.
Q. You may just state in your own way what you know about this accident and the repairing of the track, if anything, where were you when you first heard of it, and what you did.
A. I was at home when I first heard of it.
Q. At Petersburg?
A. Yes, sir. It was pretty late when I got there. I walked up where the accident was.
Q. You walked up? How far was your house from the place of the accident?
A. I guess about 2 miles and a half.
Q. What time did you get there?
A. I don't know exactly; I think it was about 10 o'clock.
Q. Who was there when you got there?
A. Well, there was a good many men there at work.
Q. When you got there?
A. Yes; first thing I did after I got there I went with a gang of men for ties up the track.
Q. What was the condition of the ties there where the accident happened?
165 A. The ties were torn up—rails out of track.
Q. How many ties were torn up and rails?
A. I think 2 rails that were pulled up.
Q. Two rails torn up completely?
A. Yes, sir.
Q. What was the condition of the ties under those two rails?
A. They were pretty rotten.
Q. Sound enough to hold spikes?
A. No, sir; I don't think they were, most of them.

Q. What caused the accident there from your observation and what you saw there?

A. I should say the spreading of the track.

Q. What caused the spreading of the track?

A. Ties not being sound enough to hold the spikes.

Q. Did you see the rails that were torn up?

A. No, sir; I never examined them.

Q. Did you see them?

A. Yes, sir; I saw them.

Q. You saw the rails. What was their condition?

A. Well, they were bent considerably.

Q. Were you able to lay them down again?

A. I don't think they were.

Q. Was there any broken rail there?

A. I never saw any.

Q. Would you have seen one if there had been one?

A. Think I would.

Q. Did you hear anybody say anything about a broken rail?

A. No, sir.

Q. You say you heard nothing said about any broken rail?

A. No, sir.

Q. No broken rail there?

A. I never saw any.

Q. If there had been you think you would have seen it?

A. I think I would.

Q. Were you employed on this section?

A. No, sir.

166 Q. You were employed under Mr. Wendell on his section?

A. Yes, sir.

Q. Did you ever do any repairing near where this curve was?

A. No, sir. Before the accident?

Q. Yes.

A. No, sir.

Q. Had you noticed particularly the condition of the track there at the curve?

A. No, sir.

Q. How long after you got there was it that Tompkins and Melville came up?

A. I think they were there when I got there.

Q. There when you got there?

A. Yes, sir.

Cross-examination by Mr. BURNETT:

Q. You say the ties were pretty rotten. How many of them were rotten; what proportion of them were rotten?

A. Good many of them rotten; don't know exactly how many.

Q. Couldn't say what proportion; night dark, wasn't it?

A. No, sir; moonshine.

Q. Cold night?

A. Tolerably cold; yes, sir.

Q. It was no part of your duty to ascertain what caused the accident, was it?
A. No, sir.
Q. Mr. Melville and Mr. Tompkins were there when you got there?
A. I think they were there; yes, sir.
Q. Mr. Sullivan was there, wasn't he?
A. Yes, sir.
Q. What was his business?
A. I don't know, hardly, what his business was.
Q. They been there some time when you got there?
A. Don't know how long they had been there.
Q. Had anything been done towards repairing the track when you got there?
A. They were at work.
167 Q. What hour did you get there, do you know?
A. I don't know what time it was; think it was 10 o'clock, anyhow.
Q. The accident happened about 6.40, didn't it?
A. I suppose so.

DECEMBER 20TH, 1886.

JOSEPH WATKINS, being first duly sworn, testified on behalf of intervening petitioner as follows:

By Mr. TUTHILL: Where do you live?
A. Petersburg, Illinois.
Q. What is your business?
A. Farming.
Q. What business were you engaged in in January, 1885?
A. Working for the Wabash road.
Q. In what capacity?
A. Working on the section.
Q. Who was your foreman?
A. Tim. Hanlon.
Q. Was the section on which you were employed the section where this accident happened at the curve?
A. Yes, sir.
Q. How long had you been working for the company before that time?
A. About a month, I reckon.
Q. How long did you continue to work for them?
A. Next March, 27th.
Q. Did you help to repair that track that night?
A. Yes, sir.
Q. When did you first hear of it, and from whom?
A. In town.
Q. At Petersburg?
A. Yes, sir.
168 Q. Did you go down there to help repair it?
A. Yes, sir.

Q. Who did you go with?
A. With the boss and some of the hands.
Q. What time did you get there?
A. About 8 o'clock, I reckon.
Q. And you helped repair it?
A. Yes, sir.
Q. Just state what was the condition of affairs when you got there where the accident happened.
A. Two rails torn out, ties pretty badly rotten.
Q. Two rails torn out and ties badly rotten?
A. Yes, sir.
Q. What was the condition of the ties under those two rails?
A. Some of them pretty bad; most of them pretty rotten; spikes wouldn't hold.
Q. Would they hold spikes?
A. No; they wouldn't.
Q. What was the cause of the accident, as you made up your mind from what you saw there?
A. I think the track spread.
Q. What caused the spreading of the track?
A. Rotten ties, I think.
Q. Did you look at these ties that were torn up?
A. I saw them there; never examined them very close.
Q. Was there any broken rail there?
A. I didn't see any.
Q. Would you have seen it if there had been one?
A. Think I would.
Q. Did you hear anything said about a broken rail that night?
A. No.
Q. By anybody?
169 A. Didn't hear any rail mentioned.
Q. What was the reason you didn't put these rails that were torn up back if they were not broken?
A. They were bent.
Q. They were bent?
A. Yes, sir.
Q. Did you ever do any repairing at this point on the track?
A. No; I don't think we did.
Q. You never did?
A. No.
Q. Do you know how many ties you put in there that night—new ties in repairing that——
A. Somewhere about 20, I reckon.
Q. When you got there what was the condition of the car—the baggage car?
A. Nearly burned up.
Q. Did you notice the stove?
A. No; I didn't see any stove.
Q. A mass of smouldering rubbish, was it, when you got there?
A. Yes, sir.

Cross-examination by Mr. BURNETT:

Q. You worked on the section north of this, did you?
A. No; on the section the wreck was on.
Q. You worked on that section?
A. Yes, sir.
Q. Worked there about a month?
A. Yes, about a month.
Q. Was it your duty to keep the track in repair—part of your duty?
A. It was our duty and the boss's.
Q. Did you pass over that track that afternoon coming home?
A. Yes, sir.
Q. What time?
A. Some time before 6, I guess.
Q. Did you discover anything wrong with it?
170 A. It had been spreading before.
Q. Discover anything wrong with it—with the track there—when you came over it that evening?
A. We never discovered anything that evening, I don't believe, that I recollect of.
Q. What time did you get down there?
A. At the wreck?
Q. Yes.
A. About 8 o'clock, I reckon.
Q. How did you get there? How did you go there?
A. Went on the train.
Q. Freight train?
A. Yes, sir.
Q. Freight engine?
A. Went up on the caboose.
Q. Was it any part of your duty to ascertain and report what caused the accident?
A. No, sir.
Q. You didn't examine the track with the view of ascertaining what caused it, did you?
A. No; I didn't examine it.
Q. You went there simply as a laborer to help repair it?
A. Yes, sir.
Q. Are you related to Ed. Watkins?
A. I don't know Ed. Watkins.
Q. The present section foreman—what is his name?
A. Lije Watkins.
Q. Was he there that night?
A. Yes, sir.
Q. Are you related to him in any way?
A. Yes, sir.
Q. What?
A. Brother.
Q. What was he doing there that night?
A. Working on the section.

Q. Worked with you, did he, at the same time?
A. Yes, sir.

171 DECEMBER 20TH, 1886.

JAMES KELLEY, being first duly sworn, testified on behalf of intervening petitioner as follows:

By Mr. TUTHILL: Where do you live?
A. Petersburg.
Q. What is your business?
A. Well, I follow most anything I can get to do now in the shape of work. Just before I came up here I was in the poultry——
Q. What business were you engaged in in January, 1885?
A. I was not really at anything at that time in 1885.
Q. Before that, what had you been engaged in from August, 1882, to August, 1884?
A. Worked on the Wabash.
Q. What capacity?
A. Part of the time section hand; part of the time foreman.
Q. What section were you foreman on?
A. Section 18, at that time.
Q. State whether or not that was the section where this accident happened on January 30th, 1885.
A. That is the section.
Q. State if at any time you did any repairing on that section in the way of putting in new ties.
A. Yes, sir; I put in 3,000 ties in that section in the summer of 1883.
Q. 3,000 ties. When did you——
A. Wouldn't swear positive to 3,000; might have been less.
Q. Just go on and tell about that.
A. Did good, fair work that season. Next season, in 1884, I distributed my ties along the road same as we had heretofore,
172 and then we got general orders of the foreman—I believe, Mr. Melville—to only put 4 ties to every 30 feet along the line.
Q. Did you get the general order before you did any repairing at the curve?
A. Yes, sir. Well, we were repairing all the time on the track, putting in ties all the time; but we got an order cutting down to 4 ties—no more than 4 ties—to every 30 feet, commencing at one end of my section and going through, he claimed, to make it safe. Went on till I came to this curve where the wreck happened, and I told Mr. Melville that I didn't think 4 ties would make that curve safe. He said, Jim—me and Mr. Melville was very familiar—he says, the company wants 4 ties to every 30 feet. He says, That is what I want; and he says, If they can stand it, we certainly can. I didn't go to work on the curve then to track it up; wanted to track this curve up above the face. I mean by that to do good work. He told me afterwards he——

(Objected to.)

Q. State what you did.

(This is all objected to by Mr. Burnett.)

A. I told hil I didn't think 4 ties would make that curve safe. He says to me afterwards—I didn't go directly to work—he says, If you think 4 ties won't hold it, put in 6. I had my ties distributed on the curve 4 to the rail length, and went to work and done as he told me, put in from 6 to 8 where it was absolutely necessary, and before I got around the curve I run out of ties; quit 7 or 8 rail lengths from this bridge they speak of—might have been 10 rail lengths; won't be positive as to that—right there, about where
173 I quit. But the summer before that, right at this place where they had the wreck, I leveled that track up there, did little repairs, put in a few ties right about there, and I supposed at that time it was safe; though- probably get ties along in the fall and finish it up, but I quit that August.

Q. Do you know where the repairing of the track happened?

A. No, sir; I never went up to the wreck at all; don't know nothing about it at all, only just what I hear from the boys about the place.

Q. Do you know, from what you have been told by men who were there and saw it repaired, what witnesses have said, where it happened?

A. Yes, sir; I know pretty near the place; that is all.

Q. Where should you say that was, with reference to the point where your ties gave out?

A. I think my ties run out about 10 rail lengths from the bridge—that is, from the bridge where I quit before I reached it.

Q. So that between 10 rail lengths and the bridge you didn't put in any ties at all?

A. That says new ties; to the best of my knowledge, had put in no ties there.

Q. What was the condition of t-at track, then, when you were putting in ties, beyond where you did put them in at that time?

A. About as good repair as it was in other parts of the road at that time.

Q. And the condition of the track there was—you said you put in more ties; did it need more ties there?

A. Oh, yes.

Q. Why?

A. Well, the ties were in bad condition; they were rotten; some of them rotten along in there; that way all around the curve.

Q. Was there need for good, strong ties there to hold the
174 spikes? More need than a straight piece of road?

A. More ties needed on the curve always—that is, good ties.

Q. There is a pressure against the rails, isn't there?

A. On the high side more so, if it has no elevation. Suppose that track had proper elevation, those spikes might have held, but not having it, of course it shoved it out. I don't know; I was not at the wreck; don't know anything about it.

Q. Is there a grade there?
A. A heavy grade—that is, from Tice to the river bridge.
Q. A decline?
A. Down grade from Tice. I believe it is 60 or 80 feet to the mile.
Q. 60 or 80 feet?
A. Yes, sir; on the hill to the mile.

Cross-examination by Mr. BURNETT:

Q. What is the length of that section?
A. 7 miles we always called it.
Q. You say you put in 3,000 ties in that section in 1883?
A. Yes, sir.
Q. Summer of 1883?
A. 1883, more or less. I wouldn't be positive—might have been more, might have been less.
Q. When did you leave there in 1884?
A. I left there in August, 1884.
Q. I will ask if when you left that track was not in reasonably good condition for the traffic done on that road.
A. It was on that curve, at that point where I repaired around that curve.
175 Q. When did you see it? You left there in August, 1884. Did you ever see the track afterwards?
A. No, sir.
Q. Don't know anything about it?
A. Don't know anything about the wreck at all, sir.
Q. Don't know what *reapirs* were made on the track after you left?
A. No, sir; don't know anything about it, whether any were made at that point at all or not.

Redirect examination:

Q. You don't mean the track was in reasonably good *reapir* where you didn't put any ties in?
A. No.
Q. You mean where you put in the ties it was in reasonably good repair?
A. Needed ties. It would carry a train around there, but still needed ties—more ties run out right at that point.
By the MASTER: How far from the bridge was it where you stopped putting in these ties?
A. From 8 to 10 rail lengths, as near as I can remember.
Q. As you *undersatdn* the statements of witnesses who have testified, was the place where the track spread where you put in the ties or between that and the bridge?
A. Between that and the bridge where I finished.

176 DECEMBER 20TH, 1886.

J. B. TENEYCK, being first duly sworn, testified on behalf of receivers as follows:

By Mr. BURNETT: Where do you live?
A. Springfield.
Q. What is your business?
A. I have been working for the Wabash Company during their——
Q. You are now working for the receivers?
A. Working for the receivers; yes, sir.
Q. What line are you running on?
A. Have been braking and running extras from Springfield to Havana and Quincy.
Q. Ever run on the Springfield and Northwestern track?
A. Yes, sir.
Q. What capacity?
A. Conductor.
Q. Freight train?
A. Freight train.
Q. What time did you run over this track?
A. I commenced breaking on the road in 1880.
Q. On the Northwestern?
A. On the Northwestern, and commenced running a train there in 1883; I think the last of 1883 or the first of 1883, I forget which. I run there 1883, 1884, and 1885.
Q. Were you running there at the time of this accident in question?
A. Yes, sir.
Q. Where were you at the time of the accident?
A. Petersburg.
Q. With your freight train?
A. Yes, sir.
Q. How often did you run on that track?
A. Twice a day; going north and south.
Q. Were you familiar with the condition of that track from Springfield to Havana?

177 A. Yes, sir.
Q. Do you know what its condition was at the time of the accident?
A. Track was in very fair order.
Q. What sort of traffic was done on that road as compared with other roads—light or——
A. Very light; compared with the other roads, very light.
Q. Do you know the percentage of traffic done on that road as compared with the main line of the Wabash?
A. Well, I suppose from——
By Mr. HALE: He asks if you know?
A. About 45; somewhere along there; from about that——
By Mr. BURNETT: From 45 to 100?
A. From 45 to 100; yes, sir.

Q. You were at Petersburg with your train at the time of the accident?

A. Yes, sir.

Q. Did you go down there?

A. To the accident?

A. Yes.

A. After I got a flagging order I went up there.

Q. With what?

A. Engine and caboose.

Q. How soon after the accident occurred—how soon did you get up there?

A. From the time I discovered there was an accident there till I got a train order to go up there against that passenger train, I suppose, probably, it was 35 or 40 minutes; might have been 40—between 30 and 40 minutes.

Q. Who was there—of the section men or anybody else outside of those belonging to that train?

A. I saw no section men there; might have been some section men went up on my caboose; wouldn't say whether or not;
178 but I was on the engine looking out for this other train. There might have been section men on my caboose. I didn't see them if they were; but as soon as I got there I went to see if anybody was hurt and who they were.

Q. Did you examine the track where the accident occurred?

A. Yes, sir.

Q. Did you examine for the purpose of ascertaining what caused the accident?

A. I was asked to by Mr. Burrill, the man that run the passenger train.

(Objected to by Mr. Tuthill. And I ask to have it stricken out.)

By Mr. BURNETT: Was he disabled?

A. He had his shoulder dislocated. He was in the engine of the passenger train, to keep warm.

Q. He asked you to examine for the purpose of ascertaining——

By Mr. TUTHILL: I ask to have it stricken out.

Q. You went there because Mr. Burrill wanted you to, did you?

A. Yes; he asked me to go there.

Q. Did you do it?

A. Yes, sir.

Q. What did you find?

A. I found the track torn up; I found a piece of rail there. I didn't measure the rail. I suppose it would be 6 or 7 feet; something like that.

Q. Broken rail?

A. Yes, sir.

Q. Did you see where the tender went off?

A. Yes, sir.

Q. Where did it go off with reapect to the breaking of that rail?

A. Right just about the end of this——

Q. Did you reach any conclusion then as to what caused the accident?

A. I didn't till after I went back and examined the track.

Q. I mean after you examined the track did you come to any conclusion?

179 A. Nothing but the broken rail.

Q. That is the conclusion you came to?

A. Yes, sir; just where it struck the curve. The cars had left their marks on the ties where the wheels left right there; might be just—as the tender didn't go off there first, might be the engine broke the rail and the coaches didn't and pulled the tender off, but the marks of all the wheels on the ties — right where this rail was.

Q. What caused the track to spread, do you know that?

A. The rail on the right-hand side, on the inside of the curve, was good; the rail on the outside was all torn up, what naturally would be torn up by the car wheels or the cars going down the bank.

Q. When the wheels go off what is the tendency with reference to the spreading of the track?

A. It is bound to tear up the rails, without they are right crossways of the rails.

Cross-examination by Mr. TUTHILL:

Q. You say this man was hurt that asked you to go there?

A. Yes, sir. He was in the passenger engine to keep warm.

Q. How seriously?

A. I didn't inquire — to that. I asked him if he was very badly hurt. He said, My shoulder hurts me terribly.

Q. Was he lying down or sitting up?

A. Sitting up on the fireman's seat. Carried him down out of the engine and carried him into that combination car.

Q. How did he get out of your combination car?

180 —. Took him out at Petersburg.

Q. Did he walk there after he got there?

A. That I can't say, whether he did or not.

Q. Only complained about his shoulder?

A. That is all; yes, sir.

Q. Was any bones broken?

A. I don't know.

Q. Ever hear there were?

A. I don't know as I ever did hear whether there were or not; know he was off his train quite a while before he went to work.

Q. Why didn't he go to look for himself?

A. Don't suppose a man feels much like it, being in a wreck; know I have been in one or two of them; didn't feel much like examining the track afterwards.

Q. What was his idea having you examine it?

A. Orders from the company that whenever a wreck——

Q. Do you know of this order yourself?

A. Yes, sir.

Q. Given to you?

A. Yes. I had an order that whenever a car got off the track to go back to where it got off and find out the cause.

Q. You didn't do it that time because Mr. Burrill asked you to?

A. Yes, sir; because Mr. Burrill asked me to.

Q. Did you have any lantern?

A. I did.

Q. Did you examine it with a lantern?

A. Yes, sir.

Q. How long did you stay there?

A. I was up there probably 30 minutes before we got the passengers into the car and got the mail sacks in.

Q. What did you do when you got there? Took the mail sacks to the other car?

181 A. Took the mail sacks on the ground; some valises and stuff around there.

Q. You took all the baggage, then?

A. I didn't see any baggage. I didn't see it.

Q. You took all the debris that was transferable and put it in your train?

A. Yes, sir.

Q. And took the passengers and put them in your caboose?

A. Yes, sir.

Q. How many were there?

A. Don't remember as to that; didn't count them or check them or have anything to do with them.

Q. You were conductor on that freight train?

A. Yes, sir.

Q. Did you have any brakeman with you on that train?

A. Two; yes, sir.

Q. Did you help put the things in the car?

A. I didn't; my men helped. I helped Mr. Burrill in — other car.

Q. You oversaw it and directed them what to do?

A. All I did at all was to help him on the car. He asked me to go back and I started to look at the track.

Q. You don't say there were no section men came up on your caboose?

A. I don't. There might have been section men on my caboose. I was on the engine; had nothing but a flagging order to——

Q. The ties—were they all right, all sound?

A. Good ties under the track; might have been some ties under the track that were not good, but comparatively the track was good.

Q. The track was good?

A. Yes, sir.

Q. Good as the average track?

182 A. Track was good for the traffic that was done on the road.

Q. What do you mean by traffic done on the road?

A. With the trains that were running; no fast trains on the road; made no fast time there; was not the best track in the world.

Q. What do you call fast time?

A. From 30 to 35 miles an hour.

Q. What time did they make on that track?

A. The time, I think, of that passenger train was only about 13 or 14 miles an hour. My time was only 10 miles an hour.

Q. Yours was the freight?

A. Yes, sir.

Q. Pretty heavy freight trains on that road?

A. Not that time of year, and had not had for a long, long time; no heavy trains at all; nothing but the coal freight.

Q. Before that time had you ever examined that track—stopped there and examined it?

A. Don't know as I had ever stopped there and examined that track; stopped there once before that about two months; running about two months and carried sand; was a very bad rail; and 15 loads is a big train for a 16-inch cylinder up that hill, and we carried sand and put on the rails there to go up the hill with.

Q. You didn't stop to examine the ties to see what their condition was then, did you?

A. No, sir.

Q. Then, the only time when you ever did examine it was that night?

A. Yes, sir.

Q. You were there altogether 30 minutes?

A. And on Sunday. I was there Sunday.

Q. You were there altogether that night 30 minutes?

A. At that time.

Q. Do you know how many ties they put in under those rails—those 2 rails there that night?

183 A. No, sir; I do not.

Q. And during the 30 minutes you were there you were busy superintending the transfer of the mail, baggage, and stuff from the wrecked train?

A. Just as I told you before, I helped Mr. Burrill on my train and took my lantern and went to see the cause of the wreck. When I came back I looked his coaches over and saw there was no fire in his coaches and came back. The passengers were on the car and says go to Petersburg, and I took them to Petersburg.

Q. About how long a time, then, did you spend there examining the track?

A. Probably 20 or 25 minutes.

Q. Of the 30 you were there, you spent examining the track?

A. Yes, sir.

184 DECEMBER 20TH, 1886.

DANIEL SULLIVAN, being first duly sworn, testified on behalf of the receivers as follows:

By Mr. BURNETT: Where do you live?

A. In Farmington, Illinois.

Q. Where were you working in 1885?

A. Working on the Havana and Wabash railroad.

Q. What doing?

A. A section foreman—section boss.
Q. What did you have, an extra gang?
A. It was kind of what they call a yard gang—an extra gang.
Q. Was it your duty to go on the road when there was a wreck?
A. Yes, sir; I was called out.
Q. Were you called out to go to the scene of this acci-ent?
A. Yes, sir.
Q. What time?
A. I couldn't really say about—I couldn't say what time it was.
Q. What time did you get there?
A. I don't really know the time; I didn't keep time.
Q. After night?
A. Yes, sir.
Q. How did you get down there—on a special?
A. Yes, sir; we took out a car and went down there.
Q. How many men were with you?
A. Four men.
Q. Were Mr. Melville and Mr. Thompkins there when you got there?
A. Yes, sir.
Q. Did they go with you?
A. Yes; they went with me in the train.
Q. Did you help repair that track?
185 A. Yes, sir.
Q. Had anything been done towards repairing the track when you got there?
A. No, sir; not as I know of.
Q. Did you examine the track for the purpose of ascertaining what caused the accident?
A. Yes, sir; Mr. Melville told me to go and get my men and go to work and fix the track up.
Q. What did you find?
A. I saw some rails kind of bent, with the wheels going off, and one cracked, and that rail wouldn't do to put in, and I went to work and put in a piece so as to make the track in a safe condition.
Q. One of the rails was broken?
A. Cracked and not in a safe condition to put back in again in the track.
Q. Where was that crack that you speak of, with reference to the point where the wheels went off?
A. About one-third of a rail.
Q. Where did the wheels of the tender go off, with reference to the bridge?
A. Wheels of the tender, I couldn't say, but the wheels of the tender run along for 4, 5, or 6 rails, along the end of the ties.
Q. After they went off?
A. Yes, sir.
Q. Do you know where the wheels of the tender went off—how near to this cracked piece in the rail?

A. I couldn't really say; maybe about a foot or a foot and a half from the end where it was cracked.

Q. How many new ties did you put in there?

A. I didn't put any in, but Mr. Melville gave the foreman an order to put in a few ties.

Q. Do you know how many he put in?

186 A. I do not.

Q. How many lengths of track had to be repaired?

A. I think there were 3 or 4 rails altogether, where the wheels went off, kind of spread the track, you know—pressed the spikes out—and about 2 rails or three was not safe, and spike-lined it on the south side and gauged it on the north side.

Q. Put any new ties in?

A. I don't remember. Mr. Melville gave an order to the foreman that was in charge of the section to put in some ties there in the morning.

Q. That rail that was cracked, did you put in a new piece?

A. Yes; I cut the rail at night and had two men to hold the lantern when I was cutting it.

Q. Cut it where?

A. Cut a rail to put in there.

Q. In that place?

A. Yes, sir.

Q. Did you use the balance of the old rail?

A. Yes, sir; some of them.

Q. Of this rail you say was cracked?

A. Yes, sir; used the balance of it.

Q. And put a piece in?

A. Yes, sir; not a very straight rail after we got it in—not a number one rail—but we didn't have the material there and we put it in and made it in a safe condition.

Q. How much did you use after you put it in?

A. Probably 20 or 21 feet.

Q. How much of a piece was off—how long was that?

A. Really, I couldn't say exactly.

Q. How did you get that off if it was only cracked?

187 A. I cut it off.

Q. You cut it off?

A. Yes, sir.

Q. At the point where it was cracked?

A. This way from the break, from where it was cracked.

Q. Had you been over that track frequently?

A. Yes, sir.

Q. Before that accident?

A. Yes, sir.

Q. What was the condition of it?

A. I thought the track in pretty fair condition.

Q. What sort of traffic was done on that road, large or small?

A. Traffic was light.

Q. Light?

A. Yes, sir.

Q. What was the condition—the general condition—of that track, taking into account the amount of traffic done on it?

A. Well, as far as my judgment leads me, the track was in pretty fair condition for the amount of traffic over it.

Q. How long had you worked on that road before this accident?

A. Well, I wasn't working on that road at all—on the Pekin branch—and it was all consolidated into the Wabash system, and I had to run over both roads.

Cross-examination by Mr. TUTHILL:

Q. Are you working for that road now?

A. No, sir; I am not.

Q. Were you working on that section at that time?

A. In Havana.

Q. On the section where the accident happened?

A. No, sir.

Q. Never worked on that section?

A. No, sir.

Q. Never made any examination of the curve there to see the condition of the track before the accident?

188 A. No, sir; only just when I was going over it—sometimes go over the road once a month gathering up iron.

Q. Pass over the road on a hand-car?

A. No, sir; on a train.

Q. And you never made any examination of the track at this point?

A. No, sir; I did not.

Q. Except such examination as you made going over it?

A. Yes, sir.

Q. On a train of cars?

A. Yes, sir.

Q. How did you cut this rail in two?

A. Cut it with a chisel.

Q. Cold chisel?

A. Yes, sir.

Q. How long did it take to cut it in two?

A. Cut the rail in half—an hour—in 25 minutes.

Q. You took 25 minutes to cut the rail in two?

A. Yes, sir, or 30.

Q. 30 minutes?

A. Yes, sir.

Q. What time did you get there?

A. I really couldn't say. I think I got there. I won't be positive about that. I know as soon as we got an order we come as quick as we could.

Q. Was not the object of your cutting the rail in two to get a part of it so you could use it? A piece of it was so twisted you couldn't use it?

A. Part of the rail was broken, so couldn't use that. The other part cut——

Q. I didn't understand you to say any part of it was broken in two—it was cracked.

A. Cracked, yes, sir; not safe to put in the track again.

189 Q. Not safe to put in again?

A. No, sir.

Q. Did you cut it off there at the crack?

A. Yes, sir.

Q. And it took half an hour to do it with a cold chisel?

A. Yes, sir; or quarter of an hour; sometimes cut quick; sometimes not so quick.

Q. Took at least 30 minutes to do that, that night?

A. Yes, sir.

Q. Did you see Mr. Teneyck there that night, or had his train gone before you got there?

A. Yes, sir; his train was gone.

Q. Which end of this rail you say you cut in two did you use—the longer?

A. The longer part of it.

Q. This short piece of it, what was the matter *of* it that you couldn't use it?

A. Took it out and put in another piece.

Q. Was it twisted?

A. It was.

Q. So you couldn't use it?

A. Yes, sir.

Q. That was the reason you cut it off?

A. Yes, sir; twisted and cracked so as it was not safe to put it in.

Q. Not safe to put it in?

A. Yes, sir.

Redirect examination:

Q. Where did you get the piece of rail that you put in?

A. I think, if I remember right, the section foreman went along the track and brought it on a hand-car.

Q. How did you get it in—cut the rail he brought down?

A. Think it was a piece he brought, and cut that piece off the whole rail—the rail's length—the piece he brought, to the best of my opinion.

190 By the MASTER: When you say this was cracked can you tell how far that crack extended through the rail?

A. Yes, sir; I can.

Q. About how much?

A. Well, sir, it was pretty much broken; only a little in the back end. For instance, here is the rail here, and she broke the rail right here, say about one-third from the joint, and on this side a little piece holding this rail on the back side.

Q. Cracked, then, nearly cross; but it was not broken so as to be separated?

A. No, sir; it was not exactly broken, to be separated at all.

Q. Do you remember whether it was cracked on the inside or outside of the rail?

A. On the inside, sir, and hanging on the outside part.

By Mr. BURNETT: Was that a new break?

A. I think it was; to the best of my opinion, it was a new break.

Q. How much of the rail was there that was not cracked off—just held by a sliver or half off, or two-thirds off, or how much of it?

A. Not held by any sliver at all.

Q. How near through the rail was it?

A. Pretty near broke through and through. I considered it nearly broke through and not safe to leave in.

By Mr. TUTHILL: But it took you half an hour to get it cut with a cold chisel?

A. Had to cut it below the break.

191 DECEMBER 20TH, 1886.

ELIJAH WATKINS, being first duly sworn, testified on behalf of receivers as follows:

By Mr. BURNETT: Where do you live?

A. Petersburg.

Q. Did you work on this track at the time of this accident?

A. Yes, sir.

Q. In what capacity?

A. I was working on repairs of track—section-work.

Q. Did you go down there on that night?

A. Yes, sir.

Q. What time?

A. I guess it was about 10 o'clock when I got there.

Q. Do you know what time the accident occurred?

A. About 6—6.40 or something.

Q. Who was there when you got there?

A. Gang of men working for Mr. Sullivan, and Mr. Melville was there with some men; don't remember exactly who.

Q. Do you know, of your own personal knowledge, what caused that accident?

A. Well, no, sir; I couldn't say positively.

Q. Did you see Mr. Melville and the road master and other parties there that night?

A. Yes, sir.

Q. Was anything said there as to the cause of the accident at that time by Mr. Melville or anybody else?

(Objected to.)

Q. Did you hear anything said?

A. Yes, sir.

Q. What was said there at that time as to the cause of the accident?

(Objected to.)

192 Q. Did you form any opinion as to what caused the accident?

A. Yes, sir.

Q. What was that opinion?

(Objected to.)

A. I think it was caused by a broken rail or something there; couldn't say positively; don't know of anything else that caused the accident.

By Mr. TUTHILL: I ask to have that stricken out.

Q. Are you now in charge of that same section?

A. Yes, sir.

Q. Do you know how many ties were put in there?

A. That night?

Q. Yes; new ties?

A. 13 ties.

Q. Thirteen ties?

A. Yes, sir.

Q. Put in 13 new ties?

A. Yes, sir; that is the number.

Q. Within what distance; how were they distributed?

A. 13 ties were put in, in 8 or 9 rail lengths.

Q. How many feet would that be?

A. Be between 200 and 300 feet.

Q. Did you put them in yourself—help?

A. I helped to do it; yes, sir.

Q. You have charge of that section now, have you?

A. Yes, sir.

Q. Are those ties there yet?

A. Yes, sir.

Q. Been any other new ties put in there—that place?

A. Yes, sir; a few; not very many; couldn't say exactly.

Q. What proportion of the ties that were placed in after the accident are there now, in the 300 feet?

A. There are at least three-fourths of the ties.

193 Q. What is the condition of those ties to-day?

A. They are good.

Q. Did you pass over the track that evening?

A. Yes, sir.

Q. Before the accident?

A. Yes, sir.

Q. What time in the evening?

A. I think about 5 o'clock.

Q. Do you know what the condition of the track was at that time?

A. Yes, sir.

Q. What was it?

A. It was good.

Q. Good condition?

A. Yes, sir.

194 Cross-examination by Mr. TUTHILL:

Q. Were you in charge of that section at that time?
A. No, sir.
Q. What section were you in charge of?
A. I was working under a man that was in charge of that section.
Q. On that section?
A. Yes, sir.
Q. Who was the man in charge of the section?
A. Tim. Hanlon.
Q. Had you ever done any work on this curve before that night?
A. Yes, sir; we did work there before, previous to that time.
Q. How long before?
A. Well, it was along in September or October.
Q. Previous—in 1884?
A. Yes, sir.
Q. That was when the new ties were put in along there, wasn't it—the 3,000 ties this other witness spoke of—you had put in those ties?
A. Put in ties after Mr. Kelley said he put in ties.
Q. At this place?
A. He says he put in ties down to within 9 rail lengths of the bridge. There was ties put in there after Mr. Kelley gave up the section.
Q. Did you or not, before when you passed over there, stop and examine to see whether that was safe to pass over?
A. No, sir.
Q. What were you on?
A. Hand-car.
Q. Did you stop there at all?
A. No; didn't stop there; not that evening.

195 Q. Did you see anything of any spikes that were so loosely embedded in these rotten ties that you could pull them out with your fingers?

A. What do you mean by rotten ties—entirely decayed?
Q. No; I don't mean that; when I speak of a rotten tie I don't mean the whole tie rotten; I mean the place where the spike goes into the tie through the rail, so the spike won't hold.
A. No, sir; I saw nothing of the kind.
Q. Are you prepared to say there was nothing of the kind there at that place?
A. I say the ties were all good.
Q. Are you prepared to say now there was no such state of affairs at that place?
A. I could pull the spikes——
Q. Yes, sir.
A. No, sir.
Q. And that people did pull them out?
A. I never saw anything of the kind.
Q. Is your knowledge of it such that you can say such a thing never took place down there?

A. There might be some spikes sticking out there, was pulling up, had no hold in the tie, person could pull out.

Q. Didn't you say that night that a good many of those ties were cut right in two under the rail and the ends pushed out?

A. Some 10 or 12 ties that were broken off—clear off—and then those were replaced with new ties.

Q. Where; where the train run off, was it?

A. No, sir; scattering all along.

Q. 10 or 12 ties where the ends were pushed clear apart?

A. The end of the rail—end of the curve—was entirely gone—broken off.

Q. Did you see any broken rail that night?

A. No, sir; I didn't see any.

196 Q. Didn't see any at all?

A. No, sir.

Q. Did you see the rails that were torn up there?

A. Don't think I did that night.

Q. Don't think you saw them at all?

A. No, sir.

Q. Did you help put down the other rail?

A. Yes, sir.

Q. Didn't you examine these rails that were torn up, to see whether they were fit to put back again, at all?

A. Not that night; no, sir.

Q. It was not your business?

A. No, sir; I was helping repair.

Q. You simply know you saw no broken rail there that night?

A. No; I didn't see any broken rail.

Q. You think a broken rail might have caused it if there had been a broken rail there?

A. I don't see what else could have caused it.

Q. Don't think it would have caused it if the track had spread and the cars had gone off the track?

A. If the track spread I suppose it would; yes, sir.

Q. That would have been just as apt to cause it as a broken rail, wouldn't it?

A. Yes, sir.

Redirect examination:

Q. You heard Mr. Kelley testify here as to putting in ties there up to within 10 rail lengths of the bridge?

A. Yes, sir.

Q. Do you say you put in ties after that between that point and the bridge?

A. The foreman that took the section after that did. Mr. Kelley gave up the section in August, and Mr. Hanlon took pos-

197 session right away and put in ties after that—September and October.

Q. Between that point——

A. Yes, sir; ties put in there.

Q. Between 10 rail lengths and the bridge?

A. Yes, sir.
Q. Do you know how many he put in?
A. Couldn't state how many, but there were ties put in; don't remember exactly the number.
Q. Did you work for Mr. Kelly?
A. Yes, sir.
Q. And Mr. Hanlon, too?
A. Yes, sir.
Q. Mr. Hanlon succeeded Mr. Kelley there?
A. Yes, sir.

Recross-examination:

Q. Did you put in any ties there yourself?
A. No, sir; I have not.
Q. How do you know anybody did, then?
A. I was working on the section.
Q. Did you see anybody put a tie in there at that place or help anybody put a tie in there after Mr. Kelly left there?
A. Yes, sir.
Q. Who did you see put a tie in there?
A. Me, Mr. Davis, and Mr. Hanlon, and I noticed the other men.
Q. What did you put ties in for? Thought you said a minute ago that you didn't put any in there yourself?
A. Helped to do it.
Q. How many did you put in there?
A. Couldn't state the number.
Q. One or two?
A. No; more ties put in there.
Q. Give the month and the day of the month when that was done.
A. Long in the fall of the year; don't remember exactly.
Q. What year?
A. Must have been in 1884.
198 Q. When was it Mr. Kelly quit working there?
A. In August, 1884.
Q. Then, in the fall of 1884 you went there to put in new ties. How many did you put in?
A. I don't know the number exactly — ties put in there; some few ties.
Q. Some few ties?
A. Yes, sir.

Redirect examination:

Q. Enough put in there to put the track in good condition?
A. Yes, sir; it was in good condition.
By Mr. TUTHILL: You are still working for the road?
A. Yes, sir.
Q. In the capacity of section foreman?
A. Yes, sir.
Q. Of the same section?

A. Yes, sir.
Q. And hope to stay?
A. I don't know; I hope to try to do right.

199 DECEMBER 20TH, 1886.

CHARLES DAVIS, being first duly sworn, testified on behalf of receivers as follows:

By Mr. BURNETT: Where do you live?
A. Petersburg.
Q. Were you working on this section where this accident occurred at the time?
A. Yes, sir.
Q. Do you know how many new ties were put in there after the accident?
A. I guess about 12 to 15.
Q. You helped to put them in?
A. Yes, sir.
Q. In what distance were they put in?
A. 7 to 8 rail lengths, I guess.
Q. Are you working on that section now?
A. Yes, sir.
Q. The old ties that were left in there at that time, are they in there now?
A. About $\frac{2}{3}$ of them, I think.
Q. What is their condition?
A. Good ties.
Q. What wood are they—white-oak ties?
A. Most of them; yes, sir.
Q. Did you come over that track the evening before?
A. Yes, sir.
Q. Worked right along on that section before that, hadn't you?
A. Yes, sir.
Q. Was it your duty to go over the track every day?
A. Yes, sir.
Q. What was the condition of the track at that point that day?
200 A. Good condition.

Cross-examination by Mr. TUTHILL:

Q. You didn't stop there to examine it?
A. No, sir.
Q. Went over it on a hand-car?
A. Yes, sir.
Q. It was safe for a hand-car, you know that, because you went over it?
A. Hand-car didn't go off.
Q. You didn't see any broken rail there, did you?
A. No, sir; I didn't see a broken rail.
Q. You helped repair the track?
A. Yes, sir.

By Mr. BURNETT: You didn't examine to see the cause of the accident?

A. No, sir.

By agreement of counsel the taking of further testimony is adjourned to Wednesday, January 5th, 1887, at 10 o'clock a. m.

201 JANUARY 5TH, 1887.

Counsel present as before.

NICHOLAS THOMAS, being first duly sworn, testified on behalf of petitioner as follows:

By Mr. HALE: What is your business?

A. I am a machinist by trade.

Q. Where do you live?

A. 26 Rice street.

Q. In Chicago?

A. Yes, sir.

Q. With whom are you employed?

A. At the present time with John Featherstone, Columbia iron foundry works.

Q. Do you know anything about safety doors for stoves in cars in use?

A. Yes, sir; I know something about them.

Q. Have you ever manufactured anything of the kind?

A. Yes, sir.

Q. When and for whom?

A. For the Chicago and Northwestern railway. I couldn't state the exact date, but I should think from 12 to 14 years ago up until about 6 and 7 years ago. I left there 6 years ago last June.

Q. How were you employed by them?

A. I had charge of the machine shop and the car department.

Q. Will you explain what that appliance was?

A. There is one of them now that they use in the stoves of their passenger cars and have used it for—I think it would be about 12 years ago since I put in the first of those.

Q. Describe it as well as you can.

202 A. In addition to the ordinary outside door there is, inside of this and swinging in the same direction, an inner door, made of iron and perforated, and forming a grate, with small interstices, and this, when the inner door is closed, is held in place as follows: There is a catch or latch, held in its place by a spring, and in addition to that is an eccentric cam, which, when the door is closed, is thrown downward, thereby making it impossible for the latch to come back, even if the spring gave out, without the cam is first moved by raising it.

Q. Is there another door outside of that?

A. Yes, sir; there is another door outside of that.

Q. That fastens by a latch?

A. By a latch with a spring catch.

Q. What is the use or purpose of that double door?

A. Sometimes when the stove was getting too hot they would open the outer door in order to stop the draft, so as to let the air pass over the top of the fire in doing so. In case of an accident of that kind there was nothing to keep the hot fire in; but by putting the perforated door on the inside, if they open the outer door the air would pass over the top of the fire and deaden the fire—stop the draft without there being any danger of fire coming out of the stove in case of an accident occurring.

Q. In case of the cars tipping over?

A. Yes, sir.

Q. You say those were in use on passenger cars on the Northwestern?

A. Yes, sir.

Q. Were they not in use in baggage cars?

A. I am not positive. I think they were, in the baggage
203 and mail cars, but I am not positive.

Q. You described a door as used on the cannon stove.

A. That is the door.

Intervening petitioner offers in evidence as intervening petitioner's Exhibit Grate Door the inner door first described by witness and the surroundings thereof, and as intervening petitioner's exhibit the door of cannon stove, the door as used upon the ordinary cannon stove.

Q. Did you say who got that grate door up?

A. I put on the first that were put on.

Q. Was that patented?

A. No, sir.

Q. Do you know whether it is in general use by the railroad companies or not?

A. I don't know any further than the Northwestern road is concerned. I have never looked into any of the others.

Q. Never was patented—no royalty?

A. No royalty; nothing at all.

Q. What have you to say with respect to the cannon stove door?

A. That has an inner door; it has the outer door. The latch is held down by a spring, so that if the stove should tip over—if the stove turned over—the only thing to make that fall back would be the weight of the latch itself. The weight of the door wouldn't have any influence at all on opening the latch and the spring is more than sufficient to hold the latch up; consequently it makes it perfectly safe, so far as the falling open is concerned.

Q. Do you know whether doors of that sort, with that
204 spring on the latch, were in general use—have been?

A. I don't know any more than they have been in general use on the Northwestern road for a good many years.

Q. On the Northwestern road, when they had cannon stoves?

A. Yes, sir. They don't use those cannon stoves at all only on cannon caboose cars. There is another safety appliance that goes with that stove; don't know whether it is worth while to say any-

thing about it or not. There have been accidents occurred by the pipe——

Q. What stove do you mean?

A. I mean the stove the inner door is attached to.

Q. The grate door is attached to?

A. Yes, sir; if that stovepipe came out the hot coal is likely to fall out of the stove and set everything on fire. We put a plate on the inside of it, hung in loose on three rods, and if the stove tipped right over and the pipe came off that plate would shut off the draft hole to which the stovepipe was attached and prevent any coal from coming out that way.

Q. That was merely for preventing the hot coal from falling out of the stovepipe hole?

A. In case it turned clean over.

Cross-examination waived.

205 It is stipulated by counsel for the respective parties that it has been customary for railroads, and among others the Wabash & Pacific railroad, to sell thousand-mile tickets to commercial travelers at a reduced rate as compared with the ordinary rates charged by railroads, and which allowed the carrying by such travelers of 200 pounds of baggage instead of 150 pounds, ordinarily allowed to travelers, and also that the receivers of the Wabash & Pacific have continued the custom of selling such tickets during the receivership.

This stipulation is made subject to objection by receivers as to its relevancy.

Complainants and defendants rest.

Which, with the exhibits hereto attached, was all the evidence introduced in said cause.

E. B. SHERMAN, *Master.*

206 INTERVENING PETITIONERS' EXHIBIT "A." E. B. S., Master.

(This is a railroad check.)

W. W. Wilcox, Chicago.

Wabash, St. Louis & Pac. Ry.

10763.

Local.

207 INTERVENING PETITIONERS' EXHIBIT "B." E. B. Sherman, Master.

EXHIBIT A, F. C. H.

Bought of Perry Brothers, wholesale jewelers, N. E. cor. State and Monroe streets.

Terms, —.

132	1 doz. plated rings			4 50
109	7/12 " filled "		12.00	7 00
108	1/2 " " "		10.50	5 25
102	1/2 " " "		8.00	4 00
104	7/12 " " "		12.00	7 00
102	3/4 " " "		8.00	6 00
101	1 " " "			10 80
102	1 " engraved rings			12 00
104	1 " " "			15 00
133	1 plated set			6 50
953	1 "			5 00
56	1 "			5 25
67	1 "			3 50
50	1 "			4 50
51	1 "			4 50
69	1 "			4 38
449	3/4 doz. gold band rings		18.00	12 00
448	7/12 " " " "		16.50	9 62
274	1/2 " " " "		30.00	15 00
21	1/2 " " " "		24.00	8 00
216	1/1 " " " "		16.50	4 13
128	7/12 " " " "		9.00	5 25
389	3/4 " " " "		27.00	20 25
426	1/2 " " " "		13.50	9 00
391	1/1 " " " "		16.50	5 50
86½	3/4 " " " "		8.00	6 00
444	10/12 " " " "		21.00	17 50
340	7/12 " " " "		19.50	11 38
270	1/1 " " " "		28.00	28 00
283	10/12 " " " "		30.00	25 00
706	1 1/12 doz. gold band rings		31.50	33 12
102	5/12 " " " "		48.00	20 00
366	1/2 " " " "		19.50	6 50
171	3/4 " " " "		34.50	25 87
170	1/3 " " " "		24.00	8 00
342	1/1 " " " "		18.00	18 00
210	2/3 " " " "		27.00	18 00
				411 30

208

	Am't bro't forward			411 30
311	11/12 doz. gold band rings @		30.00	27 50
309	10/12 " " " "		28.00	23 30
306	5/12 " " " "		28.50	11 87
310	1/12 " " " "		30.00	2 50
382	3/4 " " " "		28.50	21 38
189	1/6 " " " "		27.00	4 50
208	1/3 " " " "		21	7 00
270	1/1 " " " "		28.50	28 50
337	5/12 " " " "		24.00	10 00
441	1/1 " " " "		13.50	13 50
259	1/2 " " " "		27.00	13 50
302	7/12 " " " "		39.00	22 75
374	1/2 " " " "		21.00	10 50
381	1/2 " " " "		15.00	7 50
254	1/3 " " " "		16.00	5 33
340	1/4 " " " "		36.00	12 00

219	2/3	doz.	gold	band	rings	@	27.00	18 00
447	7/12	"	"	"	"		14.00	8 17
201 1/2	3/4	"	"	"	"		14.00	10 50
421	7/12	"	"	"	"		11.50	6 72
344	1/2	"	"	"	"		8.00	4 00
288	2/3	"	"	"	"		25.50	17 00
215	11/12	"	"	"	"		16.50	15 12
420	1/3	"	"	"	"		14.40	4 60
214	1/4	"	"	"	"		16.00	4 00
219	1/2	"	"	"	"		13.50	6 75
450	3/4	"	"	"	"		24.00	18 00
147	7/12	"	"	"	"		10.00	5 83
	1/4	"	"	"	"		49.50	12 37
267	1	"	"	"	"			25 50
39	1	doz.	misses'	gold	band	rings		3 50
359	1/2	"	"	"	"		5.00	2 50
9	1	"	"	"	"			4 50
339	1/3	"	"	"	"		7.50	2 50
351	1/2						5.50	2 75
9	1/2	"	"	"	"		4.50	2 25
356	1/6						8.00	1 33
	10/12	"	"	"	"		5.75	4 80
351	3/4	"	"	"	"		5.50	4 13
354	5/12	"	"	"	"		5.50	5 04
		Over						822 79

209

		Bro't	forward					822 79
392	11/12	doz.	misses'	gold	rings		12.00	11 00
357	3/3	"	"	"			7.50	5 00
358	1	"	"	"				7 00
40	5/12	"	"	"			3.50	1 45
10	1/4	"	"	"			4.50	1 12
358	1/2	"	"	"			7.00	3 50
356	5/12	"	"	"			16.00	6 67
417	5/12	"	"	"			4.00	1 67
877	1/4	"	"	"			9.00	2 25
3	1/4	"	"	"			10.00	1 66
788	1/2	"	"	"			16.00	8 00
311	5/12	"	"	"			10.50	4 38
378	5/12	"	"	"			14.00	5 83
307 1/2	1/6	"	"	"			9.00	1 50
	1/2	"	"	"			12.00	6 00
	1/12	"	"	"			16.00	1 33
822	11/12	"	"	"			8.50	7 79
	1/4	"	"	"			6.00	1 50
	1/2	"	"	"			10.50	5 25
	5/12	"	"	"			8.00	3 33
447	10/12	doz.	scale	rings			12.00	10 00
441	3/3	"	"				12.00	9 00
	1/4	"	"				9.00	8 25
	11/12	"	"				9.00	6 00
393	1/3	"	"				13.00	4 33
456	1/4	"	"				8.00	2 00
440	1/2	"	"				8.00	4 00
388 1/2	1/3	"	"				8.00	2 66
336	1/2	"	"				7.50	3 75
388	1/4	"	"				8.00	4 00
103	3/3	doz.	filled	rings			9.00	6 00
103	3/3	"	"				9.00	6 00
102	1/4	"	"				8.00	4 00
40	3	plated	eye-glass	chains			.75	2 25
49	1	"	"	"			.88	88
		Over						982 14

210

	Am't bro't forward		982 14
7	$\frac{1}{6}$ doz. bracelet chains	2.50	1 25
12, &c.	$1\frac{10}{12}$ " " "	3.00	5 50
50	$\frac{1}{2}$ " " "	3.00	1 50
70	$\frac{1}{2}$ " " "	3.50	1 75
38	4 sets G. F. studs	.50	2 00
702	$\frac{5}{12}$ doz. hair-chain m't'g	15.00	6 25
15	$\frac{1}{12}$ " " "	15.00	1 25
305, 298	$\frac{1}{6}$ " " "	11.00	1 83
	125 150 125		
	1 ea. H. C. m't'g, — — —		4 00
	12 311 28		
	$\frac{5}{12}$ doz. bangle	2.50	1 03
	$1\frac{1}{12}$ " "	1.50	2 75
	$\frac{1}{2}$ " "	3.00	1 50
	$2\frac{10}{12}$ " "	3.00	8 50
4	$\frac{1}{3}$ doz. sil. hooks	6.00	1 50
105	$\frac{1}{3}$ " "	3.00	75
175	$\frac{1}{12}$ " "	3.50	30
1	$\frac{1}{6}$ doz. sil. swivel	4.50	2 25
	$1\frac{1}{2}$ " gilt	1.00	1 50
105	$\frac{1}{6}$ doz. plated bars	2.75	1 37
111	$\frac{1}{6}$ " " "	3.00	1 50
A.	$\frac{1}{6}$ " " "	3.00	1 50
111	$\frac{1}{6}$ " " "	3.00	1 50
122	$\frac{1}{6}$ " " "	3.25	1 63
104	1 " " "	3.25	3 25
	$\frac{1}{3}$ " " "	3.25	1 08
	$\frac{1}{4}$ " " "	4.50	1 12
664	$\frac{1}{4}$ " " "	4.50	1 12
105	$\frac{1}{4}$ " " "	2.75	68
106	$\frac{5}{12}$ " " "	3.25	86
15	$\frac{5}{12}$ " " "	2.25	1 50
120	$\frac{1}{4}$ " " "	3.25	81
124	$\frac{1}{6}$ " " "	2.50	41
101	$\frac{5}{12}$ " " "	3.50	1 45
2	$\frac{1}{6}$ doz. silver swivel	6 00	3 00
127	1 " plated bars	2.75	2 75
10	$\frac{1}{3}$ " " " & tog.	7.50	2 50
10	$\frac{1}{6}$ " " toggle chains	1.50	75
12	$\frac{1}{3}$ " " " "	1.75	87
16	$\frac{1}{2}$ " " " "	3.00	1 50
14	1 " " " "		2 00
	Over		1,060 70

211

	Am't bro't forward		1,060 70
15	$1\frac{1}{4}$ doz. plated toggle chains	2.50	3 12
2	1 " " "		2 25
0	$\frac{10}{12}$ " " "	1.50	1 25
	1 plated Langtry pin		75
3	5 doz. plated jump rings	.35	1 75
	7 " " " "	.35	2 35
	7 " " split "	.50	3 50
	2 " sil. jump "	.45	90
	$1\frac{1}{4}$ " plated spring "	1.75	2 19
84	$\frac{1}{2}$ " " " "	1.50	75
48	$2\frac{1}{2}$ " " swivel	2.50	6 25
45	$1\frac{1}{12}$ " " " "	4.00	4 33
47	$\frac{1}{3}$ " " " "	5.00	1 66
	2 pr. G. F. sleeve-buttons	.67	1 34
510	$\frac{1}{2}$ doz. W. stone col. buttons	6.00	3 00
490	$1\frac{1}{12}$ " " "	5.00	5 42
	$\frac{1}{2}$ plated col. button	1.25	63
82	1 " "	.88	88

19	1	plated col. button			1 50
735	3½	" "		2.50	8 75
139	1	" "			1 20
2	3½	" "		1.00	3 50
	½	" "		5.00	2 50
239, &c.	3½	" "		1.25	4 37
60	½	" "		1.12	56
27	2½	" "		1.50	3 75
12, &c.	3	" "		1.50	4 50
17	½ doz.	G. F. col. button		3.50	2 90
850	1 "	" "			2 75
	1½ "	" "		3.50	5 25
430	1 "	" "			3 00
5	1½ "	" "		3.00	4 50
1050	1 "	" "			4 00
209	½ "	" "		3.50	1 75
441, 13	½ "	" "		3.75	1 87
57	½ "	" "		.88	44
		Over			1,160 11

212

		Bro't f'w'd			1,160 11
551	¼ doz.	G. F. col. buttons		2.75	68
549	¼ "	" " "		3.50	58
4	¼ doz.	ladies' col. buttons		2.00	50
408	1¼ "	" "		2.25	2 81
422	1¼ "	" "		2.50	3 12
28	½ "	" "		1.50	75
17 & 48	1¾ "	" "		.75	1 29
1	2	eye-glass chains		.88	1 76
0	¼ doz.	silk m't'g E. G.		4.00	66
	1	ea. pair gold drops,	700 300 300 83 / 427 830 830 1913		13 83
	1 "	diamond drops,	800 2100 2100 1050 4000 / 983 1 a 1 a 1002 133½		100 50
	1 "	"	1100 1100 40.00 48.00 / 100 100 133¾ 28–25		110 00
	1 "	"	48.00 38.00 1050 / 38–2 4233 2588		96 50
	1	ea. diamond stud,	800 36.00 28.00 / 197 38–18 38.14		72 00
1811	1	diamond bar pin			10 00
	1	ea. diamond col. button,	3.50 500 / 1018 24		8 50
2	1	10-k. gold swivel			1 75
	1	ea. " hair m't'g,	2.75 2.00 / 16 6		4 75
2810	1	gold scarf-pin			5 00
2981	1 "	stud			5 00

12	1	filled bar		1 50
6	1	gold eye-glass chain		2 75
20	1/4	doz. gold eye-glass chains	18.00	4 50
83	1	" bracelets	12.50	12 50
3	1/2	" "	6.00	5 00
2	1/2	" "	6.00	3 00
2	1/2	" 10-k. bracelets	9.00	4 50
1	1/4	doz. gold spring rings	10.00	2 50
4	1/4	" "	10.00	2 50
4	1/4	" end chains	13.50	3 37
5	1/4	" "	15.00	3 75
6	1/12	" eye-glass hook-	8.00	67
9	1/4	" clasps	8.50	2 12
1, 2	1/2	" "	4.00	2 00
46	1/4	" col. buttons	12.00	6 00
52	1/2	" " "	8.00	4 00
9	1/2	" " "	5.50	2 75
3	1	" " "	6.00	6 00
6	1/2	" " "	6.00	2 00
	1/6	" " "	9.00	1 50
		Over		1,673 00

213

		Am't bro't forward		1,673 00
9	1/2	doz. gold col. buttons	5.50	2 29
2	1/2	" " "	7.00	1 16
9	1/2	" " "	5.50	2 75
3	1/2	" " "	7.00	58
51	1/2	" " "	9.00	3 00
38	1/2	" " "	9.00	75
62	1/2	" " "	9.00	2 25
22	1/2	" " "	7.00	1 75
726	1/6	" " "	10.50	1 75
	1/2	" " "	9.00	75
33	1/2	doz. ladies' gold col. button-	12.00	4 00
	1/2	" " " "	13.50	4 50
35	1/2	" " " "	12.00	4 00
36	1/2	" " " "	10.00	5 00
83, 18	1/2	" " " "	9.50	3 16
	1/2	" " " "	13.50	1 13
33	1/2	" " " "	12.00	1 00
202	1/2	doz. wire m'c'k	24.00	8 00
	1/2	" emb. pin-, B. L. E.	12.00	4 00
780	1/2	" " "	9.00	1 50
	1/2	" " "	15.00	1 25
788	1/2	" " "	12.00	3 00
2	1	eastern star		2 75
796	1/6	doz. G. A. R. pins	15.00	2 50
	1/2	" emb. pins	18.00	12 00
566	1/6	" K. P. "	18.00	3 00
2	1/6	" " "	9.00	1 50
817	1/12	" A. O. U. W. pin-	7.00	58
867	1/2	" " "	12.00	8 00
733	1/4	" " "	9.00	2 25
696	1/6	" " "	10.50	1 75
	1/6	" " "	10.50	1 75
768	1/6	" " "	10.50	2 75
771	1/12	"	21.00	1 75
732	1/6	" C. H. P. pin-	12.00	2 00
188	1/6	Masonic pin-	10.50	1 75
		Over		1,774 90

204*a*

		Am't bro't forward		1,774 90
199	1/4	doz. Masonic em. pin-	9.00	1 50
749	1/4	" " "	12.00	3 00

606	$\frac{1}{4}$ doz. Masonic em. pin		15.00	3 75
748	$\frac{1}{4}$ " " "		3.50	1 37
396	$\frac{1}{4}$ " " "		10.50	2 63
717	$\frac{1}{4}$ " " "		10.50	2 62
336	$\frac{1}{3}$ " " "		15.00	10 00
330	$\frac{1}{6}$ " " "		13.50	2 25
333	$\frac{1}{6}$ " " "		16.50	2 75
163	$\frac{1}{6}$ " I. O. O. F. "		8.00	1 33
415	$\frac{1}{12}$ " " "		9.00	75
10	$\frac{1}{12}$ " " "		10.50	87
331	$\frac{1}{6}$ " " "		13.50	2 25
745	$\frac{1}{12}$ " " "		15.00	1 25
640	$\frac{1}{12}$ " 3-link "		7.50	1 25
652	$\frac{1}{4}$ " " "		8.75	2 18
641	$\frac{1}{2}$ " " "		9.00	4 50
642	$\frac{5}{12}$ " " "		12.00	5 00
92	$\frac{1}{12}$ " plated 3-link em. pin		4.50	75
96	$\frac{3}{12}$ " " " "		5.00	3 33
466	$\frac{1}{12}$ " " " "		3.50	30
766	$\frac{1}{4}$ " emb. pin		13.50	3 37
587	$\frac{1}{4}$ " "		12.00	3 00
	1 ea. emb. pin, $\frac{751\ 87\ 113\ 138}{143\ 370\ 0\ 593}$			4 13
544	2 gold bar pin		2.25	4 50
541	2 " "		3.00	6 00
78	1 " "			2 87
81	1 " "			1 88
766	1 " "			5 50
332	2 " "		1.88	3 76
335	3 " "		2.37	7 11
	1 ea. S. bar pin, $\frac{425\ 400\ \#400\ \#400\ 150\ 163\ 156}{363\ 166\ 166\ 273\ 345\ 280\ 292}$			20 88
	1 " " " $\frac{113\ 113\ 150\ 150\ 125}{286\ 286\ 418\ 393\ 484}$			6 50
	1 ea. pr. gold cuff-pins, $\frac{200\ 225\ 225\ 225\ 225}{448\ 282\ 452\ 282\ 456}$			11 00
896, 720	$\frac{5}{12}$ doz. gold baby pins		10.50	4 37
	1 ea. gold set, $\frac{550\ 550\ 450}{701\ 700\ 369}$			15 50
	1 ea. garnet set, $\frac{350\ 475\ 350\ 550}{24\ 24425\ 23786\ 8113}$			17 25
	1 " scarf-pin, $\frac{250\ 200\ 200}{3671\ 5350\ 6196}$			6 50
5349	2 " "		2.00	4 00
				1,956 65

205*b*

	Am't bro't forw'd	1,956 65
	1 ea. garnet pin, $\frac{450\ 450\ 275\ 363}{2351\ 2761\ 5640\frac{1}{2}\ 4310\frac{1}{4}}$	15 38

	1 ca. garnet pin, 275/7259 350/27551 #350/27768 500/27684 350/2768 #350/27568			21 75
	1 " " 550/27684 325/662			8 75
	1 " set, 563/2689 900/25510 1050/7968–66			25 13
	1 ca. pr. garnet drops, 150/2288⅓ 200/1363½ 200/½ 225/5490½			7 75
25374	1 pair garnet drops			2 75
25299	2 " "		1.25	2 50
27679	2 " "		1.00	2 00
28161/2	2 " "		2.00	4 00
27064	2 " "		3.75	7 50
2740	2 " "		2.25	4 50
8276	2 " "		2.00	4 00
	1 " turquois drops			1 25
	⅓ doz. pr. W. stone drops		16.50	5 50
	White stone. 1 pr. ea. drops, 350/191 400/65 350/79 250/599 250/599 213/0 75/0 250/0			21 38
	2 pair W. stone drops		2.25	4 50
	1 ca. pr. W. S. drops, 400/83 275/127 350/179 213/127 250/539 250/539 200/290 200/290			21 38
319	3 pair " "		4.63	13 89
	4 " " "		3.12	12 48
	4 " " "		3.50	14 00
	2 white-stone scarf-pin-		.88	1 76
	3 " "		1.00	3 00
	2 " "		1.25	2 50
	2 " "		3.50	7 00
	2 " "		1.63	3 26
338	1 " "		2.50	2 50
	1 " "			4 50
	3 prs. im. pearl drop-		2.00	6 00
	2 " W. stone "		2.00	4 00
	2 " " "		1.50	3 00
	1 " " "			1 25
	3 white-stone bar pin-		4.00	12 00
559	1 " "			5 00
685	1 " "			4 25
273	2 " "		4.50	9 00
134	1 " "			3 00
	Over			2,229 06
206c				
	Am't bro't forward			2,229 06
658	2 white-stone bar pin-		3.50	7 00
101	2 " "		5.50	11 00
45	4 " "		3.00	12 00
125	2 " "		2.75	5 50
320	1 " "		2.00	2 00
642	1 W. stone gold cross		8.25	8 25

128½	2	silver Rhine-stone pin	2.25	4 50
95½	5	" " "	2.75	13 75
60½	2	" " "	1.00	2 00
129	1	" " "		2 00
87½	2	" " "	2.00	4 00
126½	1	" " "		2 25
		550 150 120 120 120		
		1 each gold sc'f-pin, — — — — —		10 60
		197 753 584 510 568		
399	2	pair gold sleeve-buttons	2.25	4 50
394, 409	5	" " "	3.00	15 00
338, 433	4	" " "	2.50	10 00
381, 221	2	" " "	4.25	8 50
19868	1	" " "		5 00
685	3	" " "	4.50	13 50
624	2	" " "	5.00	10 00
650	1	" " "		6 00
2625	1	" " "		3 75
621	1	" " "		4 00
638	1	" " "		3 25
724	5/12	doz. gold sleeve-button	21.00	8 75
485	1/3	" " "	27.00	9 00
803, 802	4	pair " " ea.	3.50	14 00
640	4	" " "	3.75	15 00
375	4	" " "	3.00	12 00
		275 300 325		
		1 ea. pr. G. S. buttons, — — —		9 00
		814 654 687		
226	1/3	doz. gold drops	28.00	7 00
204½	1/3	" "	18.00	6 00
90	1/6	" "	13.50	1 25
135	1/4	" "	22.50	5 62
71	1/6	" "	10.00	1 66
211	1/3	" "	10.50	3 50
162	1/6	" "	10.50	1 75
128	1	pair "		3 00
		200 83 225 100 68 75 75 100		
		1 ea. pr. gold drops, — — — — — — — —		9 26
		556 154 562 211 ¼ ½ ½ 161		
		Over		2,504 20
207*d*				
		Am't bro't forward		2,504 20
22204	4	pr. gold drops	1.50	6 00
3	3	" "	1.37½	4 13
3	1	" "		1 38
2	1	" "		1 13
18	1/6	doz. pr. wire drops	9.00	1 50
15	1/4	" " "	10.50	2 62
	5/12	" Jersey pins	7.50	3 13
	5/12	" "	12.00	5 00
11	1/6	" "	21.00	3 50
16	1/12	" "	16.50	1 37
		350 450 400 300 500 475 450 225 200		
		1 ea. Rhine S. pin, — — — — — — — — — —		33 50
		121½ 118½ 66½ 112½ 61½ 33½ 140½ 143½ 2½		
530	7/12	doz. G. F. cuff-pins	8.50	3 54
279	1/6	" " "	10.00	1 66
	1 7/12	" " "	9.50	15 03
	1/2	" " "	8.00	4 00
	1 1/2	" " "	8.50	9 21
	1/12	" " "	9.50	79

	1/4 doz.	e'm'l'd G. F. cuff-pins	5.50		1 37
	5/12 "	chased " "	3.50		1 45
26	1/12 "	gold pin-	3.75		3 10
113	2/3 "	" " "	3.00		2 00
7	1/2 "	plated "	.75		38
8	1/12 "	" " "	1.50		87
	1/12 "	ass't- scarf-pin-	12.00		6 00
	1/2 "	" " "	8.00		1 33
	1/6 "	" " "	10.00		1 66
	1/6 "	" " "	7.50		1 25
	1/6 "	" " "	7.50		1 25
	5/12 "	" " "	6.00		2 50
	1/4 "	" " "	7.50		1 87
	1/6 "	" " "	3.50		58
2229	1/6 "	jet drops	9.00		1 50
01501	1/6 "	" "	16.50		2 75
2222	1/3 "	" "	10.50		3 50
2206	1/4 "	" "	12.00		3 00
1581	1/12 "	" "	4.50		37
		Over		2,638	42

208e

		Am't bro't forward		2,638	42
908	1/3 doz.	jet drops	6.00		2 00
		1 pr. ea. jet drops, 83 75 100 70 75 / 2199 96 2092 2585 2191			4 03
	1/4 doz.	jet bar pin-	19.50		4 87
2299	7/12 "	" "	16.50		9 63
628	1/6 "	" "	10.50		1 75
1559	1/4 "	" "	12.00		3 00
1321	1/6 "	" "	15.00		2 25
1531	1/12 "	" "	21.00		1 75
		1 each jet set, 275 275 350 325 325 400 400 / 1213 1221 1490 1832 1832 485 1604			23 50
		1 " " " 350 350 325 350 350 275 / 1428 1417 1793 1428 1428 1631			20 00
593	1/6 doz.	shawl pins	16.00		2 75
16	5/12 "	" " "	9.00		3 75
	1/12 "	gilt swivel-	1.00		25
	1/6 "	plated keys	9.00		1 50
44	1/3 "	" "	10.50		3 50
2147	1/3 "	coral wire drops	9.00		3 00
4	1/6 "	" "	3.50		58
3	1/4 "	" "	12.00		2 00
124	1/12 "	" "	6.00		50
	1/6 "	" "	10.00		2 50
X.	1/3 "	" "	7.50		2 50
O. X.	1/3 doz.	coral pin-	4.50		1 50
12, 87	1/2 "	" "	6.00		3 00
12	1/4 "	" "	6.00		1 50
1	1/3 "	" "	7.50		2 50
		1 each coral set, 300 325 / 1537 6444			6 25
435	1	white S. tail pin			4 50
164	2 "	" "	4.00		8 00
615	1 "	" "			4 00

	163 250 425 325 163 162			
	1 gold tail pin, — — — — — —			14 88
	265 474 549 111 10 10			
413	4 " " "		1.13	4 52
432	2 " " "		1.00	2 00
476	2 " " "		1.63	3 26
357	2 " " "		2.25	4 50
70	2 single-stone studs		.50	1 00
571	2 " "		1.00	2 00
280	2 " "		.88	1 75
325	4 " "		1.13	4 52
172	5 " "		1.62	8 10
89, &c.	2 " "		1.00	2 00
	Over			2,813 81

209*f*

	Am't bro't forward			2,813 81
209	$\frac{1}{6}$ doz. white-stone studs		9.00	1 50
814	$\frac{1}{4}$ " "		13.50	3 37
1476	$\frac{1}{6}$ " "		9.00	1 50
192	$\frac{1}{6}$ " "		5.00	83
11	$\frac{1}{4}$ " "		6.00	1 50
411	$\frac{1}{6}$ " "		21.00	3 50
586	$\frac{1}{6}$ " "		18.00	3 00
9	$\frac{1}{6}$ " "		19.50	3 25
	$\frac{2}{3}$ " "		13.50	9 00
203	$\frac{7}{12}$ " "		15.00	8 75
	150 125 88			
	1 ea. stud, — — —			3 63
	586 0 0			
798	$\frac{1}{2}$ doz. O. R. C. pins		16.50	8 25
10	$\frac{1}{6}$ " emb. "		19.50	3 25
574	$\frac{1}{2}$ " B. L. E. "		13.50	6 75
759	$\frac{1}{12}$ " emb. pin-		21.00	1 75
772	$\frac{1}{12}$ " "		23.50	1 96
779	$\frac{1}{12}$ " "		23.50	1 96
602	$\frac{1}{6}$ " "		18.00	3 00
504	$\frac{1}{4}$ " "		10.50	2 63
767	$\frac{1}{12}$ " "		10.50	87
513	$\frac{1}{12}$ " "		12.00	5 00
3941	$\frac{1}{4}$ doz. sleeve-buttons		8.00	2 00
1459	$\frac{1}{3}$ " "		4.50	1 50
452	$\frac{1}{6}$ " "		19.50	3 25
706	$\frac{3}{4}$ " "		6.00	4 50
52	$\frac{1}{6}$ " "		18.00	3 00
5079	$\frac{1}{3}$ " "		18.00	6 00
4936	$\frac{1}{4}$ " "		18.00	4 50
216	$\frac{1}{3}$ " "		5.50	1 37
5005	$\frac{10}{12}$ " "		10.50	8 75
5283	$\frac{2}{12}$ " "		8.00	3 33
5096	$\frac{1}{6}$ " "		9.00	1 50
5083	$\frac{1}{6}$ " "		12.00	2 00
5028	$\frac{1}{12}$ " "		6.00	50
5257	$\frac{1}{4}$ " "		24.00	6 00
453	$\frac{1}{6}$ " "		9.00	1 50
360	$\frac{1}{12}$ " "		12.00	1 00
	Over			2,939 76

210*g*

	Am't bro't forward			2,939 76
217	$\frac{1}{12}$ doz. sleeve-buttons		13.50	1 13
579	$\frac{1}{3}$ " "		13.50	4 50
536	$\frac{1}{6}$ " "		13.50	2 25
5313	$\frac{1}{12}$ " "		21.00	1 75

6045	1/12 doz. utility buttons	24.00		2 00
6143	1/4 " " "	9.00		2 25
6102	1/12 " " "	7.50		62
6140	1/12 " " "	9.00		75
6228	3/4 " " "	15.00		11 25
6228	1/12 " " "	15.00		1 25
6231	1/4 " " "	13.50		4 38
6234	1/3 " " "	10.50		3 50
	1/4 " " "	10.50		2 62
6005	5/12 " " "	16.50		6 88
6010	1/3 " " "	18.00		6 00
6257	10/12 " " "	9.00		7 50
63, 5948	1/4 " " "	24.00		6 00
353	3/4 doz. G. F. sleeve-buttons	13.50		10 13
344	1 1/3 " " "	10.50		14 00
313	1/6 " " "	9.00		1 50
305	1/3 " " "	9.50		2 37
309	1/4 " " "	9.00		2 25
330	1/6 " " "	21.00		3 50
332	1/4 " " "	19.50		4 87
857	1/4 " " "	9.00		2 25
4955	1/4 doz. plated S. buttons	4.50		1 12
4920	1/6 " " "	11.00		1 83
4556	1/6 " " "	7.50		3 75
3579	5/12 " " "	13.50		5 62
4919	1/12 " " "	10.50		88
1336	1/4 " " "	10.00		2 50
5299	1/4 " " "	12.00		3 00
5301	5/12 " " "	13.50		5 63
4996	1/2 " " "	16.50		8 25
4942	1/6 " " "	13.50		2 25
4965	1/3 " " "	12.00		4 00
294	1/6 " " "	11.00		1 83
244	1/12 " " "	6.00		50
1224	3/6 " " "	9.00		3 00
4951	1/2 " " "	13.50		6 75
	Over			3,096 17

211*h*

	Am't bro't forward			3,096 17
4950	1/3 doz. plated sleeve-buttons	18.00		6 00
5000	1/4 " " "	16.50		4 12
156	1/4 " " "	4.50		1 13
115	1/6 " " "	5.00		83
663	7/12 " " "	7.50		4 37
4597	1/3 " " "	10.00		3 33
352	5/12 " " "	1		2 92
	1/2 " " "	6.00		3 00
	1 each par. pin-, 175 163 113 225 225 263 / 692 15½ 0 0 0 0			11 64
	1 " " " " 200 175 125 113 / 0 0 0 0			6 13
1579	1/3 doz. plated bar pin-	19.50		4 87
1468	1/4 " " "	21.00		5 25
1484	1/4 " " "	12.00		3 00
1458	5/12 " " "	22.50		9 37
1364	1/12 " " "	10.00		5 83
15½	5/12 " " "	19.50		8 12
2023	1/6 " " "	18.00		3 00
16	1/4 " " "	24.00		6 00
1368	1/6 " " "	8.00		1 33
1038	1/4 " " "	10.50		1 75
6103	1/3 " " "	15.00		5 00

1875	1/3 doz. plated bar pin-		10.00	3 33
1812	1/6 " " "		7.00	1 16
1205	1/4 " " "		8.00	2 00
321	1/4 " " "		16.00	4 00
	1 ea. bar pin-, 125 163 288 163 238 175 200 / 0 0 0 0 0 0 0			13 52
	1 " " 138 2.50 1.37 92 163 / 11.20 15.13 473 517 19			7 80
400	1/6 doz. plated bar pin-		16.50	2 75
1699	5/12 " " "		18.00	7 50
717	1/6 " " "		13.50	2 25
1144	1/4 " " "		15.00	3 75
697	1/3 " " "		19.50	6 50
1381	1/6 " " "		16.00	2 66
1241	1/2 " " "		18.00	9 00
44 1/2	10/12 " " "		21.00	17 50
23	1/3 " " "		16.50	5 50
	Over			3,282 38

212

	Am't bro't forward			3,282 38
1360	1 doz. plated bar pin-		12.00	12 00
123	3/4 " "		3.50	2 62
1499	2/3 " "		10.50	7 00
1647	2/3 " "		9.50	6 28
1539	1 1/3 " "		8.00	10 66
492	1/3 " "		5.50	1 38
271	1/6 " "		4.50	75
416	1/3 " "		6.00	2 00
523	1/3 " "		7.00	1 75
173	1/4 " "		10.00	2 50
901	1/6 " "		9.00	1 50
94	10/12 doz. G. F. bar pin-		7.50	6 25
12	1 " "		8.00	8 00
	1 ea. G. F. pin, 62 63 84 / 0 0 0			1 47
102	1 1/3 doz. G. F. bar pins		10.00	13 33
76	3/4 " "		8.50	6 37
130	1/4 doz. plated drops		6.00	1 50
365	1/6 " pr. "		7.50	1 25
	2/3 " " "		7.00	4 67
162	1 1/6 " " "		7.00	8 16
68	1/2 " " "		15.00	7 50
	1/6 " " "		16.00	2 66
	1/4 " " "		12.00	3 00
	1/6 " " "		8.50	1 42
	1/2 " " "		19.00	9 50
	1/4 " " "		12.00	3 00
	1/12 " " "		13.50	1 13
	1/12 " " "		8.00	67
	1/4 " " "		10.00	2 50
	1/3 " " "		10.50	3 50
	1/4 " " "		13.50	3 37
	5/12 " " "		15.00	6 25
	1/3 " " "		18.00	6 00
	1/6 " " "		11.00	1 83

		1.50 1.13 1.63 150 63 175 1.75		
	1 pr. each drops,	—— —— —— —— —— —— ——		11 39
	$\frac{1}{12}$ doz. pr. drops		10.00	83
	$\frac{1}{24}$		5.50	92
	$\frac{1}{6}$		5.50	91
	$\frac{1}{12}$		11.00	1 83
	$\frac{1}{6}$		10.00	1 66
				3,451 69
213j				
		Am't bro't forward		3,451 69
	$\frac{1}{3}$ doz. pairs drops		6.00	2 00
	$\frac{1}{6}$ " " hoops		9.00	1 50
		350 50 75 88 113 92		
	1 ea. pr. drops,	—— —— —— —— —— ——		7 68
		x x x x x x		
	$\frac{1}{2}$ doz. pr. drops		18.00	6 00
	$\frac{1}{3}$ " " "		12.00	2 00
200	$\frac{1}{12}$ " " G. T. drops		7.00	6 42
559	$\frac{1}{6}$ " " "		8.00	1 33
30, &c.	5 plated sets		3.25	16 25
84	2 "		3.00	6 00
14	2 "		2.50	5 00
$1630\frac{1}{2}$	1 "			2 75
		375 325 150 400 450 400 400		
	1 ea. plated set,	—— —— —— —— —— —— ——		25 00
		1387 1145 1564 154 784 757 754		
		213 200 250 113 113 150 400		
	1 " "	—— —— —— —— —— —— ——		14 39
		1327 861 1329 684 684 $684\frac{1}{2}$ 832		
		350 350 275 275 450 250 213 212		
	1 " "	—— —— —— —— —— —— —— ——		23 75
		2661 2061 2063 2063 89 1170 199 1289		
		325 225 288 225 263 263		
	1 " "	—— —— —— —— —— ——		15 89
		1282 990 334 998 968 968		
29, 30	$\frac{1}{2}$ doz. G. F. set		10.50	3 50
55	$\frac{1}{12}$ " "		21.00	1 75
49	$\frac{1}{6}$ " "		16.00	2 66
67	$\frac{1}{6}$ " "		21.00	3 50
42	$\frac{7}{12}$ " "		15.00	8 75
	$\frac{1}{4}$ doz. crosses		4.50	1 12
	$\frac{1}{4}$ "		4.50	1 13
	$\frac{1}{3}$ "		9.00	2 25
	$\frac{1}{6}$ "		7.50	1 25
	$\frac{1}{12}$ "		7.00	58
		750 750 1500 1500 18.00 3400		
	1 ea. diamond ring,	—— —— —— —— —— ——		97 00
		211 211 166 166 169 139		
		34.00 21.00 21.00 18.00 30.00 30.00		
	1 " "	—— —— —— —— —— ——		154 00
		139 123 123 113 $343\frac{1}{2}$ $343\frac{1}{2}$		
		36.00 1050 37.50 15.00 1650 1400 1250 13.50		
	1 " "	—— —— —— —— —— —— —— ——		155 50
		179 $326\frac{1}{2}$ $322\frac{1}{2}$ 303 394 186 $337\frac{1}{2}$ $57\frac{1}{2}$		

		1 ea. diamond ring, 1350 11.00 12.00 14.00 950 950 21.00 / 51½ 333½ G D 390½ 338 338 155		90 50
	1	" " 16.00 40.50 3000 5100 3750 4200 / 321 130 154 323¾ 320¾ 159		217 00
	1	" " 950 700 18.00 12.00 1450 1200 1650 / 116 164 170 334½ 126 321 301		89 50
	1	" " 1600 1050 20.00 9.50 27.00 9.75 25.50 / 116½ 145 114 338 139 176 154		118 25
	1	" " 1650 42.00 1800 1100 14.00 11.00 75.00 / 321 149 155 143 113 143 982		187 50
50–52	1	diamond ring		46 50
341⅓	5	" "	14.50	72 50
		Over		4,842 39

214

		Am't bro't forward		4,842 39
34	3	stone-pearl & ruby ring	7.00	21 00
176	2	garnet & pearl "	5.00	10 00
54	1	dia. & pearl "		7 00
60½	2	" & " "	5.25	10 50
55	1	cat-eye "		3 50
65	1	diamond "		5 25
72	4	" "	4.00	16 00
56	4	" "	6.25	25 00
1½	1	pearl "		7 50
1	2	" "	4.25	8 50
8	2	" "	16.00	32 00
		1 ea. turquois & dia. ring, 1700 1800 1800 1650 / 212½ 840 203½ 178½		69 50
	1	" " & pearl " 7.75 7.75 7.75 625 875 750 625 / 165 165 165 214 178 202 214		52 00
175	7	initial rings	7.00	49 00
265	20	" "	6.00	120 00
265	7	marg. "	3.75	26 25
264	8	" "	3.50	28 00
268½	1	" "		4 25
266	2	" "		4 00
266½	2	" "		4 50
262	7	" "	3.00	21 00
264	1	" "		3 50
281	3	" "	5.00	15 00
1506	3	" "	3.38	10 14
219	3	" "	5.50	16 50
2	2	" "	2.13	4 26
4	2	" "	3.25	6 50
10	3	" "	1.50	4 50
		1 ea. W. S. rings, 225 175 225 163 / 429 390 429 421		7 88

432	3	W. S. rings	1.25		3 75
429	3	" "	2.25		6 75
440	4	" "	2.25		9 00
406	3	" "	1.38		4 14
426¼	3	" "	1.25		3 75
	1	" "			1 37
126	2	" "	1.25		2 50
227	1	" "			1 75
331½	3	tiger-eye cameo ring	5.50		16 50
330	2	" " "	5.00		10 00
330½	3	" " "	5.00		15 00
		Over			5,509 93

215

		Am't bro't forw'd			5,509 93
330	1	tiger-eye cameo ring			5 00
329	3	" "	4.50		13 50
330	2	" "	5.00		10 00
331	3	" "	5.50		16 50
296	3	" "	5.00		15 00
294	1	" "			4 00
295½	3	" "	4.50		13 50
434	1	" "			4 75
436½	3	" "	5.00		15 00
345½	1	" "			4 50
440	2	" "	4.25		8 50
329½	2	" "	3.50		7 00
340	5	" "	4.25		21 25
345½	1	" "			4 50
334	2	" "	3.25		6 50
434½	2	" "	3.00		6 00
1123	1	onyx ring			4 50
1124	1	"			3 75
998	2	"	3.50		7 00
9¼	2	"	2.38		4 76
998	2	"	2.63		5 26
997	2	"	3.00		6 00
3	3	"	3.50		13 50
968	2	"	3.50		7 00
351	1	"			3 50
175	2	"	5.25		10 50
185	2	cameo rings	5.50		11 00
185½	3	"	5.00		15 00
316	2	incrusted rings	4.50		9 00
315	5	"	4.25		21 25
303	1	"			6 00
302	1	"			5 50
190	1	"			6 50
266	2	"	7.50		15 00

1 ea. set ring, 450 425 3.50 500 450 350 / 369 4 3 209 202 1054 ---------- 26 25

1 " 3.00 2.76 350 2.75 3.50 2.25 2.25 / 254 2 1054 1089 1054 1 1 ---------- 20 00

	Over		5,866 70

216

	Am't bro't forward		5,866 70

1 ea. set ring, 2.38 237 425 425 200 200 / 213 213 361 361 81 371 ---------- 17 25

1 ea. set ring, 2.00 4.75 4.75 4.00 2.00 / 371 1454 1454 351 1442 ---- 17 50

37	½ doz. amethysts rings		34.50	11 50
33	⅓ " " "		42.00	10 50
33	¼ " " "		45.00	11 25
48	2 " "		4.50	9 00
307	2 " "		4.50	9 00
58	3 " "		5.00	15 00
16	⅙ doz. " "		30.00	5 00
57	⅙ " " "		45.00	7 50
35	1/12 " " "		27.00	2 25
12	⅙ " " "		27.00	4 50
50	3 " "		2.63	7 89
41	⅙ doz. " "		21.00	3 50
8	⅓ " " "		22.50	7 50

1 ea. am. rings, 263 2.00 140 250 / 511 391 0.6 16 ---- 8 52

7	½ doz. amethyst rings		16.50	8 25
39	⅓ " " "		19.50	6 50
6	¼ " " "		15.00	3 75
5	¼ " " "		13.50	3 37
8	¾ " " "		16.50	12 38
90	1/12 " " "		12.00	1 00
41	1/12 " " "		21.00	1 75
81	¼ " " "		21.00	5 25
41	⅙ " " "		21.00	3 50
7	⅓ " " "		16.50	5 50
81	⅙ " " "		21.00	3 50
	⅓ doz. garnet*t* rings		24.00	8 00
306	5/12 " " "		33.00	13 75
203	1⅔ " " "		19.50	26 00
	⅔ " " "		15.00	10 00
	1/12 " " "		19.50	1 63
158	⅓ " " "		19.50	6 50

1 ea. garnet*t* ring, 3.13 3.75 3.63 4.00 375 2.00 / 342 352 145 196 341 304 ---- 22 26

304	2 garnet*t* rings		4	8 00
302	1 " "			3 50
313	3 " "		3.75	11 25
308	4 " "		2.75	11 00
58½	3 " "		2.75	8 25
390	⅔ doz. topaz rings		18.00	12 00
222	3 cluster garnet*t* rings		4.00	12 00
				6,223 26

217

	Am't bro't forward			6,223 26
223	1 cluster garnet*t* ring			3 38
	2 " " "		2.75	5 50
596	1 " " "			3 75
77	2 garnet*t* & pearl ring		3.50	7 00
6	1 " & "			2 33
68½	2 " & "		6.00	12 00
43½	3 " & "		3.38	10 13
29½	1 " & "			3 00
21½	1 " & "			3 00
171½	1 " & "			4 63
	1 " & "			6 50

96	1 garnet & pearl ring			3 00
10½	3 " & "		1.50	4 50
10½	1 " & "			1 50
64	3 turquois and pearl ring		4.25	12 75
348	1 " & "			2 50
140	2 " & "		4.50	9 00
57	1 " & "			6 00
7	1 " & "			2 00
68	1 " & "			7 00
36	1 " & "			4 00
36½	4 turquois rings		3.50	14 00
787	4 " "		2.33	7 32
382	2 " "		2.00	4 00

3.25 3.25 4.00 350 300 200 300 2.33
1 ea. set ring, ——— ——— ——— ——— ——— ——— ——— ——— 24 13
43½ 36⅜ 310 80 136 380 391 83

94	⅛ doz. T. eye rings		15.00	2 50
95	⅓ " "		18.00	6 00
322	1 garnet & pearl ring			8 75
320	2 " & "		7.00	14 00
85	3 " & "		7.50	22 50
84	2 " & "		6.00	12 00
316	3 " & "		5.00	15 00
316	1 " & "			5 00
87	1 " & "			5 00
329	3 " & "		5.75	17 25
334	2 " & "		5.00	10 00
	Over			6,504 18

218

	Am't bro't forw'd			6,504 18
332	1 garnet & pearl ring			6 25
331	2		6.00	12 00

8.00 4.00 8.25 7.50 7.25 4.50
1 ea. G. & P. ring, ——— ——— ——— ——— ——— ——— ——— 39 50
335 310 99 343 390 330

500 500 500 7.00 500 4.25 425 450
1 " " ——— ——— ——— ——— ——— ——— ——— ——— 40 00
87 98½ 98½ 170 321 355 86 300

389	2 garnet & pearl rings		5.63	11 25
402	2 " & "		5.62	11 25
42	2 " & "		3.62	7 25
98	3 " & "		5.25	15 75
86	2 " & "		4.88	9 75
328	2 " & "		4.00	8 00
386	3 " & "		4.25	12 75
351	2 " & "		3.75	7 50
9	1 " & "			3 00

400 3.75 7.00 4.50 3.75 5.50 5.50 250
Ass't 1 ea. ring, ——— ——— ——— ——— ——— ——— ——— ——— 36 50
326 308 170 324 108 110 110 195

6.00 6.00 375 3.62 3.75 362 3.63
" 1 " ——— ——— ——— ——— ——— ——— ——— 30 37
68½ 53 90 75 90 156 156

61	3 G. & P. rings		15 00

	1 ea. ring, 5.00 5.00 4.38 4.00 363 438 4.00 / 445 445 299 153 156 299 153				30 39
	1 " 425 2.50 4.25 / 129 195 129				11 00
317	$\frac{5}{12}$ doz. garnett rings			30.00	12 50
Inlaid	3 band rings			4.50	13 50
"	1 "				4 50
"	1 "				3 00
"	1 "				2 50
457	$\frac{1}{4}$ doz. scale rings			10.50	2 63
608	$\frac{5}{12}$ " "			28.50	11 87
560	$\frac{10}{12}$ " "			19.50	
				3.25	
					16 25
					6,878 44
919	3 plated curb vests		8.75	26 25	
684	1 " "			3 75	
416 ex.	2 " "		4.12	8 25	
222	3 " "		4.88	14 63	
713	1 " "			5 25	
222	2		4.88	9 75	
416	2 " "		4	8 00	
684	7		3.50	24 50	
684	7 " "		3.50	24 50	
221	4		3.25	13 00	
210	8 " "		3.00	24 00	
310	12		2.75	33 00	
274	1 " "		20 off	2 25	
				197 13	
				39 42	
					157 71
					7,036 15
219					
	Am't bro't for'd				7,036 15
1090	1 plated curb vest			3 25	
1091	1 " " "			3 50	
310	2 " " guards		9.00	18 00	
	1 ea. fancy vest, 4.50 4.25 4.50 3.00 5.75 5.50 / 707 2211 1047 1175 776 1147			27 50	
	1 " " 450 5.50 450 4.00 450 400 450 / 524 1142 1108 1201 0 1189 1087			31 50	
855	1 fancy vest			4 50	
1202	2 "		4.50	9 00	
1200	2 "		5.00	10 00	
175	3 "		2.25	6 75	
489	2 wire vests		2.00	4 00	
2201	2 "		2.50	5 00	
1114	2 "		3.25	6 50	
359	2 "		3.50	7 00	
766	5 "		1.50	7 50	
350	2 "		3.25	6 50	
302	2 "		2.00	4 00	
371	3 "		2.50	7 50	
1140	3 "		1.75	5 25	
588	1 "			2 50	

	1 ea.	wire vest,	300 2.50 2.75 2.00 350 275 300 / 415 342 130 302 822 17 1047		19 50
	1	"	3.25 5.25 3.00 2.50 3.75 2.25 3.75 3.75 / 1073 1004 1700 1096 1003 176 1084 1113		27 50
	1	"	3.00 3.00 350 200 350 4.00 500 5,00 2.50 / 2217 2060 2010 1019 933 1101 1165 1165 990		31 50
1179	2	3-stran-	curb vests	9.00	18 00
832	3 3	"	"	7.00	21 00
818½	6 3	"	"	6.50	39 00
1110	1 3	"	"		6 00
1180	1 2	2-stran-	"		7 50
1180	1 2	"	"		7 50
832	1 2	"	"		7 00
1056	6 2	"	"	6.00	36 00
726	1 2	"	"		4 50
827	1 2	"	"		6 00
734	4 2	"	"	5.50	22 00
715	2 2	"	"	4.50	9 00
734	1 2	"	"		5 50
					437 25
		Less 20 %			87 45
					349 80
		Over			7,385 95

220

		Am't bro't forward			7,385 95
790	3	2-stran-	curb vests	4.25	12 75
915	1 2	"	"		4 00
62	2 2	"	"	4.50	9 00
965	2 2	"	"	4.00	8 00
716	2 2	"	"	4.50	9 00
735	3 2	"	"	4.50	13 50
302	3	10 plated	vests	3.00	9 00
759	1	"			4 50
10	3	"		4.87½	14 64
846	3	"		5.50	16 50
848	3	"		6.50	19 50
448	4	"		7.00	28 00
310	4	"		3.75	15 00
4 X.	2	"		7.75	15 50
3 X.	1	"			7 00
416	3	"		6.75	20 25
4 X.	1	"			7 75
684	2	"		6	12 00
210	1	"			4 50
310	1	"			3 75
274	3	"		3.37	10 11
247	1	"			3 12
1049	1	"			3 50
433	1	plated guard and slide	chain		4 75
433-175	2	"	& "	5.00	10 00
729-588	1	"	& "		10 25
	1	"	& "		6 00
176-42	1	"	& "		9 50
268-96	1	"	& "		11 00
744½	1	"	& "		9 00
286-116	1	"	& "		8 50
0704-234	1	"	& "		10 25
286-65	1	"	& "		11 00
0104-244	1	"	& "		10 25
63	1	"	& "		6 75

1 ea. ladies' vests, 500 2.50 3.75 375 3.00 3.00 375 / 894 2016 728 725 446 446 794 ..... 24 75

1 " " 3.75 4.50 375 4.63 3.75 3.45 400 175 / 1183 590 1183 2003 794 183 623 1283

600 600 / 983 983 ..... 41 58

594 4 ladies' vests 4.50 18 00

1 ea. " " 225 4.00 4.50 350 450 450 650 325 / 960 376 834 153 796 765 355 763 ..... 33 00

380 36

Less 20 % 95 09

Over 7,766 31

221

Am't bro't forward $7,766 31

1221 2 roller necks 2.10 4 20
913 5 wire " 5.00 25 00
911 1 " " 3 00

1 ea. neck, 375 350 375 250 275 275 275 300 300 / 801 1561 801 1018 750 687 750 635 76 ..... 27 75

From page 52:
275 2 single curb vests 4.50 9 00
276 2 " " 4.25 8 50
1090 2 " " 3.00 6 00
579 3 wire vests 3.00 9 00
210 4 curb vests 3.00 12 00
222 3 " 4.50 13 50
274 3 " 2.25 6 75

124 70

Less 20 % 24 94

99 76

1 ea. flat neck, 2.88 2.87 2.38 3.00 200 188 300 2.88 212 / 62 62 60 52 433 591 198 62 432 ..... 23 01

1 ea. flat neck, 200 250 2.12 1.88 213 212 / 139 52 23 20 23 23 ..... 12 75

1 ea. queen vest, 213 225 233 225 275 225 225 2.00 / 1153 614 489 614 1249 340 1139 161 ..... 18 21

32 1 emb. chain & locket 22 50
93, 36, 52 3 " & " 16.50 49 50

1 ea. emb. chain, 14.00 6.00 4.25 750 6.50 4.00 5.25 425 / 42 488 441 407 25 7 477 440 ..... 51 75

400 2 emb. chains 4.00 8 00
487, 485 4 " 3.50 14 00

1 ea. " 4.25 5.25 / 441 649 ..... 9 50

	1 ea. gold locket,	400 250 283 313 313 4.66 375 4.50 300 / 2 10 0 3ex. 3 5 240½ 75c. 14		31 50
	1 " "	5.75 3.00 413 2.50 3.66 5.50 625 5.50 550 / 46c. 14 75 71 16 17 19 17 19		41 79
	1 " "	250 2.00 450 3.00 288 250 300 175 138 / 3½ 2½ 375 367 583 533 12 1 587		23 51
	1 " "	300 213 150 200 213 .88 / 12 436 12 50½ 706 6		11 64
	3 5/12 doz. knife charms		12.00	41 00
	5/12 " plated charms		6.00	2 50
	1/6 " "		9.00	1 50
	1/3 " "		12.00	4 00
	5/12 " "		15.00	6 25
	1/2 " "		12.00	2 00
	1/6 " "		9.00	1 50
264	1/6 " "		7.50	1 25
2580	1/3 " "		6.00	2 00
618	10/12 " "		7.50	6 25
	Over			$3,251 98
222	Am't bro't forw'd			8,251 98
	2/3 doz. plated chains		4.50	3 00
	1/6 " "		9.00	1 50
	1/6 " "		10.50	1 75
	1/3 " "		9.00	3 00
	2 " "		6.00	12 00
	1/6 " "		12.00	2 00
	1/3 " "		7.50	2 50
	1/2 " "		4.50	2 25
	1 " "		10.50	2 63
	1/4 " "		13.50	3 37
	5/12 " "		10.50	4 38
	1 " "		12.00	3 00
	1 1/2 " "		15.00	1 25
	1/4 " "		10.50	2 63
	1/2 " "		4.00	2 00
	1 ea. gold knife,	1600 223 168 / 0 0 0		9 93
	1 ea. charm,	200 150 113 100 75 38 100 113 88 63 50		10 90
	1/6 doz. plated lockets		9.50	1 58
	3/4 " "		10.50	7 87
	1/2 " "		13.50	6 75
	1/6 " "		10.50	1 75
	1/6 " "		15.00	2 50
	1/3 " "		16.50	5 50
	1/6 " "		19.50	3 25
	1/3 " "		18.00	6 00
	1/6 " "		21.00	3 50
	10/12 " "		15.00	12 50
97	3 ea. Roman locket		2.50	7 50

	225 225 213 225			
	1 ea. Roman locket, ——— ——— ——— ———			8 88
	1700 1259 1701 65			
200	1/4 doz. "			4 87
	1/3 " lockets		13.50	3 37
	2/3 " "		15.00	10 00
	5/12 " "		13.50	5 63
580	1/6 " "		18.00	3 00
591	1/4 " "		15.00	3 75
870	1/6 " "		16.50	2 75
1038	1/4 " "		13 50	3 37
	1/4 " "		30.00	7 50
	2 ea. lockets		3.50	7 00
	1/6 doz. "		16.50	2 75
	1/6 " "		25.50	3 75
	Over			8,445 39
223				
	Am't bro't forward			8,445 39
	1/6 doz. plated lockets		15.00	2 50
	1/6 " "		18.00	3 00
	1/4 " "		13.50	3 38
	1/4 " "		7.50	1 87
	1/4 " "		8.50	2 12
	1/6 " "		15.00	2 50
	1/6 " "		19.50	3 25
	7 ea. lockets		1.25	8 75
	1/6 doz. "		19.50	3 25
	1/3 " "		15.00	5 00
	10 ea. locket		2.50	25 00
	8 " "		1.38	4 13
	5 " "		1.50	7 50
	3 " "		2.33	6 99
	2 " "		1.88	3 76
	1/4 doz. "		21.00	5 25
	1 ea. "			2 33
	4 " "		2.62	10 48
	1 doz. "		25.50	25 50
	1/6 " "		25.50	3 75
	1/4 " "		22.50	5 63
	225 1.88 1.13 2.25 1.88 1.13 2.00 1.63 1.62 1.75			
	1 ea. locket, ——— ——— ——— ——— ——— ——— ——— ——— ——— ———			17 52
	163 137 175 138 125 188 188 163 88 112			
	1 " " ——— ——— ——— ——— ——— ——— ——— ——— ——— ———			14 77
	138 100 113 162 225 125 138 137 113 87 100			
	1 " " ——— ——— ——— ——— ——— ——— ——— ——— ——— ——— ———			14 38
	100 162 138 88			
	1 ea. compass charm, ——— ——— ——— ———			5 88
	1/4 doz. "		7.50	1 87
	3/8 " "		10.50	7 00
	10/12 " "		6.00	5 00
	1/4 " "		15.00	3 75
	1/6 " "		7.50	1 25
	1/3 " "		12.00	4 00
	1/6 " "		9.00	1 50
	3/8 " "		13.50	9 00
49 1/20	2 doz. silk guards		4.50	9 00
49 1/15	2 " "		3.62	7 24
49 2/10	2 " "		2.63	5 26
	Over			8,688 75

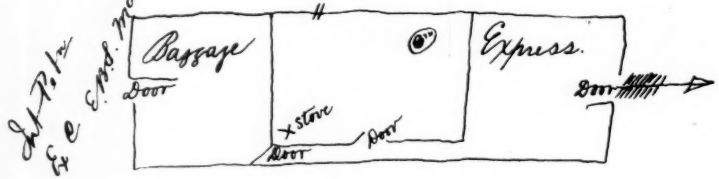
224

		Am't bro't forward			8,688 75
49 2/3	2 doz.	silk guards		1.33	2 66
54 9/10	2 "	"		2.25	4 50
54 9/10	4 "	"		2.63	10 52
54 9/10	1 "	"			1 20
52 4/10	1 "	"			2 25
187 1/2	1/12 "	"		10.50	87
207	1	gold fob			6 00
1 & 135	2/3 doz.	blue charms		6.00	4 00
8	3	flat neck.		2.33	6 99
3102	1/2 doz.	plated buttons		6.00	3 00
1456	1 "	" "			4 50
427	1/6	G. F. "		15.00	2 50
5118	1/6 "	" "		13.50	2 25
500	1	H. & L. pin			1 38
	1	emb. "			67
792	1/6 doz.	emb. pins		9.00	1 50
202	1/4 "	wire neck.		24.00	6 00
998	1	Langtry pin			75
103	1/4 doz.	gold col. buttons		10.50	2 63
84	1/6 "	" " "	ladies' dia.	24.00	4 00
2381456	1	Wm. Ellery K. W. movement			5 30
2320449 2320833 2241770	3	"	h't'g stemw. movement	6.75 x	20 25
2270723 2299754	2	"	O. F. " "	6.75	13 50
2194231	1	"	O. F. " wicket		9 50
2272462	1	"	h't'g " "		9 50
2265284	1	2 pr. P. S. Bartlett	S. W. "		10 00
2511690 2511682	2	4 " "	key-w. "	9.85	19 70
J 1166	1	10-k. Ellery, im. box	2312784		28 35
2 a 146	1	10-k. "	2311088		26 15
J 7745	1	10-k. "	2283238		26 20
I 4372	1	10-k. "	2228649		24 05
K 4190	1	10-k. "	2373379		25 60
2 a 1840	1	10-k. "	2433747		25 55
18510	1	10-k. " skylight	2283801		22 50
H 8976	1	14-k. nickel royal	2121987		41 35
J 4004	1	14-k. 2-pair " im. box	2229965		33 25
I 2541	1	14-k. " " "	2174140		53 20
K 934	1	14-k. " " "	2203351		41 45
I 3597	1	14-k. Ellery	2287487		40 10
H 4405	1	14-k. "	2260253		33 44
		Over			9,267 66

225

		Am't bro't forward			9,267 66
4130	1	14-k Ellery	2226513		33 30
16837	1	filled " F. & B.	2466458		20 50
16733	1 "	" & "	2433163		20 50
14514	1 "	" & "	2283158		20 50
15418	1 "	" shell	2260427		22 50
16686	1 "	" tull	2311456		23 50
15536	1 "	" "	2176129		23 50
15728	1 "	" "	2174728		23 50
15845	1 "	" gold orn't	2283268		26 00
16984	1 "	" "	2225775		26 00
H 6013	1	H. K. pl. Hillside, 14 size	2172972		35 50
19900	1	filled nickel Riverside, O. F.	2073722		36 00
14500	1 "	plain Hillside, "	2067486		24 25
14477	1 "	" h't'g	2200378		25 25
13562	1 "	" "	2231501		25 25

Plan of Baggage Car

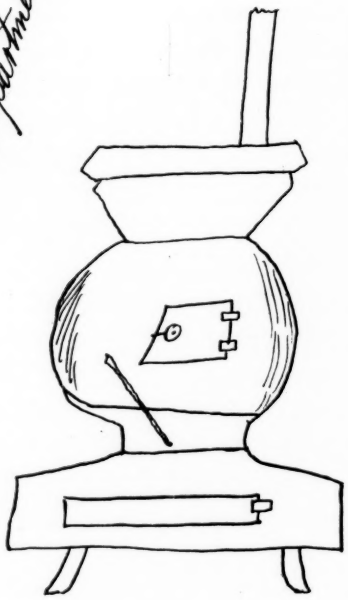


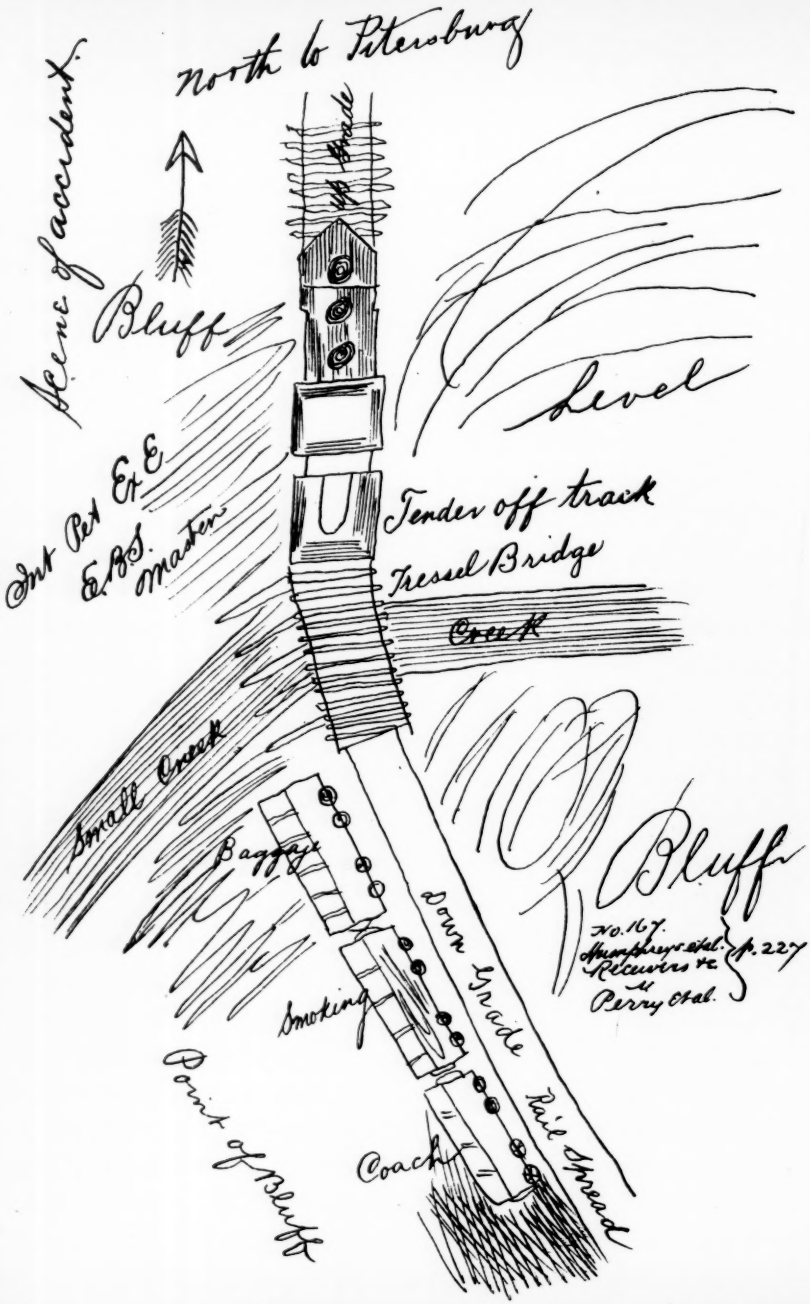
Int. Pt. v.
E & E Exp. Co. master

No. 167
Humphreys et al. Receivers vs. Perry et al. } p. 226

Int Pt
E & D Exp. Co. master

Cut of Stove in Mail Compartment




North to Petersburg
Scene of accident.
Bluff
High Grade
Level
Int Pet Ex E.
E. & S. Master
Tender off track
Tressel Bridge
Creek
Small Creek
Baggage
Smoking
Down Grade Rail Spread
Coach
Point of Bluff
Bluff
No. 167.
Humphreys et al. Receivers &c
v.
Perry et al.
p. 227

15164	1 filled nickel Riverside		2093013		38 50
15633	1 " pl. Hillside		2200373		23 75
23240	1 " sterling, O. F.		2397086		15 00
					$9,720 96
	1 trunk			24 00	
	5 watch trays	@	3.00	15 00	
	60 jewelry trays	@	.20	12 00	
	1 diamond ring tray			4 00	
	3 tel. cases	@	4.00	12 00	
F. B.	1 shell, gold filled, S. W. case			20 50	
					87 50
					$9,818 46

(Here follow diagrams marked p. 226 and p. 227.)

228 MAY 28TH, 1887.

Present: Messrs. R. H. Tuthill and C. E. Hale, for petitioners, and Mr. G. B. Burnett, for receivers.

J. W. PATTERSON, being first duly sworn, testified on behalf of receiver as follows:

By Mr. BURNETT: Where do you live?

A. Springfield, Illinois.

Q. How long have you lived there?

A. I have lived there 11 years the 20th of last March.

Q. What business were you engaged in during the time you have lived in Springfield?

A. Station baggageman for the Wabash.

Q. Were you engaged in that business on the 30th of January, 1885?

A. Yes, sir.

Q. Did you check a trunk on that day from Springfield to Petersburg?

A. Yes, sir; that is, I checked a piece of baggage; couldn't say it was a trunk.

Q. Do you know the number of that check?

A. Yes, sir.

Q. What is it?

A. It is 10763.

Q. Do you know Mr. Perry?

A. No, sir; not that I know of; don't know him by name; might know him if I saw the gentleman.

Q. Was that the only piece of baggage checked for Petersburg that day?

A. Yes, sir.

Q. That was for the evening train?

A. Yes, sir; evening train, 2.10.

229 Q. Did you know whether or not at the time you checked this trunk or piece of baggage that it contained jewelry?

A. No, sir; I did not know what it contained.

Q. Was it checked in the ordinary way that baggage is checked?

A. Yes, sir.

Cross-examination by Mr. TUTHILL:

Q. How long have you been baggageman there, Mr. Patterson?

A. I have been there a little over 11 years.

Q. You know what are known as commercial travelers' trunks, do you not, when you see them?

A. Well, no, not all of them; can't tell—that is——

Q. When you see a trunk, a heavy trunk, heavily iron-bound, with heavy iron corners and iron clasps, iron along the corners and iron bandages all around it and two or three strong locks in front, what kind of baggage would you suppose to be in the trunk?

A. Well, we couldn't suppose what was in the trunk.

Q. You wouldn't suppose that contained ordinary wearing apparel, would you—a trunk of that sort?

A. Well, I don't know as I would.

Q. Are not trunks of that description trunks that are carried by commercial travelers generally?

A. Bless you, they carry all kinds, sizes, and sorts.

Q. Don't they carry that kind of trunk?

A. Yes, sir; lots of that kind of trunks on the road.

Q. Those are not the trunks ordinarily used by travelers carrying wearing apparel?

230 A. No; but there is—once in awhile you find a castaway sample trunks that are picked up, parties carry them, but it is not very often the case.

Q. What do you mean by sample trunks? What is a sample trunk?

A. What we call—that is, a trunk that contains different kinds of samples.

Q. How do you know when you see them?

A. Well, we don't know them without some party opens the trunk.

Q. When you see a trunk of that sort you naturally suppose it has samples in it?

A. Yes, sir.

Q. They are made much stronger than ordinary trunks, are they not—different build?

A. Yes, sir; different-built trunk.

Q. Well known to all baggagemen and railroad men as sample trunks, are they not?

A. Yes, sir.

Q. You know as a matter of fact, do you not, that jewelry firms have transported their stock of jewelry in trunks of that make?

A. Yes, sir.

Q. Passing over your lines daily?

A. Yes, sir.

Q. Checked as ordinary baggage?

A. Yes, sir; at that time, but not now.

Q. When did it cease?

A. Well, I judge it is a little over a year ago, I think, the first order that came out.

Q. How do you enforce that order? If a man comes to you with a trunk how do you enforce the order?

A. At the present time?

Q. Yes.

A. Have them to—that is, if we have our doubts about the trunk we ask them and see if it doesn't contain jewelry; if it does, we have them sign a release, at the present time.

Q. You didn't prior to a year ago?

231 A. No, sir.

Q. What kind of trunk would attract your attention so as to lead you to make inquiry of the owner of it or person in charge of it?

A. Well, it is smaller; you can't tell—that is, generally; great many hardware trunks and stationary that are built are a good deal alike, in the same style as jewelry trunks; all about the same.

Q. That is, the hardware men carry their stock in trunks the same as jewelry men do?

A. Yes, sir.

Q. Knives and things of that sort?

A. Yes, sir.

Q. And stationary, you say?

A. Some stationary in trunks built sumilar to those other trunks.

Q. About how large are these jewelry trunks?

A. Well, I couldn't say; I never saw inside of very many of them.

Q. Trunks that you supposed, when you saw it, had jewelry?

A. Probably 3 feet by $2\frac{1}{2}$, I guess, square.

Q. Similar to the ordinary commercial travelers' sample trunk?

A. It is smaller than some and larger than some.

Q. You would also judge by the weight of a trunk, would you not, as to what was in it, somewhat?

A. Yes, sir.

Q. If you found a trunk of that size, iron-bound, as before described, and weighing over 150 or 200 pounds, you would naturally suppose it had either a stock of jewelry or a stock of hardware in it, wouldn't you?

A. Yes, sir; or stationary; stationary is very near as heavy a trunk; about as heavy—heavy trunks.

Q. Many of these stationary trunks on the road?

A. O, yes, sir; good many of them.

232 Q. How long has that practice been of carrying stationary in trunks of that sort?

A. I don't know; been in it 20-odd years; ever since I have been on the road.

Q. Don't you know, from your experience of 11 years, if a trunk containing jewelry came into your possession and you handled it you would be able to tell what was in it?

A. No, sir; and nobody else.

Q. If a trunk came into your possession of that sort, at least its character is so well known to you, you would make inquiry about it, wouldn't you?

A. Of course, once in awhile; we do not every time.

Q. Do you think trunks are passing over the road now—jewelry trunks—that you make no inquiry about?

A. I couldn't say.

Q. You try to make inquiry about every one?

A. Yes, sir; I know—that is, I don't know it, but I am convinced in my own mind because there was a party the other day passed through, and another party said he traveled three weeks and had jewelry in his trunk—what we call a boot-and-shoe trunk. Of course, now they carry jewelry in different kinds of trunks.

Q. Since the order has gone into effect?

A. I suppose they did before that; for a blind to turn off suspicion, they have different kinds of trunks.

Q. But a trunk jewelry is usually carried in you would at once inquire about, wouldn't you?

A. A trunk of the usual description.

Q. If it came into your office you would make inquiry about it, wouldn't you, in order to have the release signed?

A. Yes, sir.

233 Q. Have you got a form of that release?

A. No, sir; I haven't.

Q. What is the substance of the release?

A. That is, we would check it; that is all.

Q. You would check it?

A. We would check it. If you would come in there, and I would ask you if you had jewelry in that trunk, and you would say no, you would either have to sign a release or open the trunk and show me. If you opened the trunk, and it had jewelry in it, then we would turn it over to the express company.

Q. That company send by express now?

A. Yes, sir; by express.

Q. Do you require them to open the trunks before you check them?

A. Yes, sir—that is, if they sign the release; that is all.

Q. Unless they sign the release you make them open the trunk?

A. Certainly.

Q. If that trunk was to come into your place—the trunk pointed out to you now—if that trunk was to come in there and you were to lift it and find out it weighed over 150 or 200 pounds, what would you do?

A. Well, I couldn't say.

Q. Wouldn't you naturally make inquiry, seeing a trunk of that sort?

(Objected to.)

Q. Would you make inquiry, as to what was in the trunk, of the man that had the trunk?

A. Well, I couldn't say, sitting here, what I would do if I was checking the trunk there.

Q. Look at it.

A. We have a great many stationary trunks just the same
234 shape, and hardware, too. I have handled thousands of the——

Q. Just see; if that trunk should come in there and Mr. Perry was there with it, wouldn't you ask him if that trunk had jewelry in it?

A. No; don't know as I would. That doesn't look near as much like a jewelry trunk—lots of jewelry trunks. Looks more like a hardware trunk than a jewelry trunk.

Q. You make hardware men sign the same receipt, do you not?

A. No, sir.

Q. You don't make the hardware men sign the release?

A. No, sir.

Q. Do you know what lead them to make the change in their requiring this receipt given?

A. I don't know, sir; it is beyond my line.

Q. If that trunk was presented to you by a man who asked you to check it, you don't think you would ask him what it contained?

Q. Well, I couldn't say whether if that trunk was presented to me——

Q. Just answer the question.

A. I do answer it. I couldn't tell.

Q. Now, since the adoption of the new rule?

A. Well, that is a question that can't be answered.

Q. What do you think about it?

A. That is what I say. I couldn't say whether I would or wouldn't.

Q. Don't see why you couldn't?

A. More than likely there are lots of trunks that come through that we don't inquire; probably pass through our hands.

Q. If that trunk was to come?

A. I couldn't say without you come there with that trunk.

Q. Don't you think you would?

A. Couldn't say whether I would or not.

235 Q. Don't you think you would?

A. No, sir; I don't think so. If I did, I would say it.

Q. You can't tell whether you would or not?

A. No; I can't tell whether I would or not.

Q. You usually intend to ask men who have trunks that you think may contain——

A. That is, of course, we will probably check from one room in the evening; have four trains that we probably check from 75 to 100 pieces of baggage, and in a hurry——

Q. If only one piece of baggage; if that trunk alone was presented to you and you were in no hurry?

A. Be just; might come to my hands twice and I would ask the question; might go through three times and I wouldn't ask.

Q. Suppose that trunk was there and you had plenty of leisure, in no hurry; that was the only trunk going on that train; suppose

it was the only trunk there going on that train and there was a man in charge of it, had a hand-bag in his hand or an ordinary valise in his hand, and said, "I want this trunk checked"?

A. I couldn't say whether I would ask him or not.

Q. Don't you think you would ask him what was in it?

A. Couldn't say.

Q. Don't you think you would ask him if he had a stock of jewelry in there?

A. Of course, I might ask him and I might not.

Q. Don't you think you would now, with this rule in mind—since this rule is in force? Don't you think, with this rule in your
236 mind and a man came with that trunk, you would ask him if he had jewelry in that trunk?

A. I will have to answer that just as I did before.

Q. Well, answer it just as you did before.

A. I say I couldn't say whether I would or not.

Q. Don't you think the probabilities are that you would?

A. No, I don't think the probabilities are that I would or wouldn't. Of course, you come in there with that trunk and I might ask you; you might come five times and I might only ask you 2 times out of the 5.

Q. When you see that trunk—as soon as you look at that trunk—your impression would be at once that is not a trunk just for the personal baggage, when you saw that trunk, wouldn't it?

A. Certainly, I would know it was not personal baggage.

Q. Now, then, you have no particular recollection about that particular trunk or of Mr. Perry?

A. I do not.

Q. Don't recollect Mr. Perry?

A. No, sir.

Q. You know at that time there were a great many jewelry trunks on the road, and had been previous to that time, in carrying stocks of jewelry in trunks?

Q. Couldn't say a great many, because I never saw but very few of them; couldn't see what they contained.

Q. You know as a general thing that jewelers travel on the road with their stocks, don't you?

A. Yes, sir.

Q. They transported their goods from town to town in trunks?

A. Yes, sir.

Q. And sold from their trunks?

A. I couldn't say about that; don't know anything about
237 that—checked the baggage.

Q. You have heard them talk there about jewelry trunks in your business there?

A. No, sir; very little.

Q. Don't you officers of the road, in charge of baggage—don't you talk with each other and with commercial travelers about their baggage?

A. Yes, sir; that is——

Q. Nature of the trunks?

A. No, sir.

Q. When you have to have assistance that generally leads to some conversation as to what is in it?

A. No, sir.

Q. You merely state this trunk was sent on that check?

A. I couldn't say.

Q. Have you any memorandum to show there was extra baggage charged for that trunk—extra pay?

A. That is, I couldn't say whether that trunk or not; we collected 25 cents from Springfield to Petersburg on that date.

Q. On that piece of baggage?

A. I wouldn't say whether or not.

Q. That was the only piece of baggage checked?

A. Must be that; must have been that; without, of course, we missed getting a check down, which don't happen very often. You know in a hurry might check two pieces and only get one down.

Q. Not much rushed there that day?

A. No, sir; don't know as there was; don't aim to let any baggage go through our hands without checking.

Q. You are still in charge of the office there, are you not?

238 A. Yes, sir.

Q. Baggageman still for the Wabash?

A. Yes, sir.

Q. Have you any memorandum with you showing this transaction of checking that baggage?

A. No, sir; only the number of the check; that is all.

Q. You had something to refer to?

A. Yes, sir.

Q. Have you that record here?

A. No, sir.

Q. What is that record?

A. It is January 30th, 1885.

Q. What else?

A. That is all; just had the number of the check on our books, and we have just stub tore off, and this side we keep for our own benefit; the other side we give to the station baggageman; that goes into the general office, and we have these back for—ever since I have been there; can refer back to any piece of baggage that ever passed through the room.

By the MASTER: That shows the date and the station and number of the check?

A. Yes, sir.

Q. Stations to and from?

A. Yes, sir.

Q. And extra pay, if any?

A. Yes, sir; we have another stub that is different; but, understand, our excess baggage receipts has no number of the check on.

By Mr. TUTHILL: I understand you to say, Mr. Patterson, that some of these travelers, jewelry men, you have reason to believe they have tried to deceive you by carrying jewelry in other trunks?

A. I couldn't say they were trying to deceive me or somebody else.

Q. Trying to deceive the company?

A. I suppose they have.

Q. How do they do that?

A. Put them in different-shaped trunks.

239 Q. Different-shaped trunks?

A. Yes, sir; common trunks.

Q. Just in a common trunk?

A. Yes, sir.

Q. What leads you to suspect that?

A. I never knew anything of it till this party told me he traveled with a party 3 weeks a short time ago and he had them in another trunk.

Q. Ordinary trunk?

A. Size; yes, sir.

Q. Was that baggage checked through your office there?

A. I couldn't say whether it was or not, but I tell you when I heard this; was no later than yesterday; party was in there just after this gentleman was in and heard part of the conversation and said, I was 3 weeks with a party that had jewelry. Some don't know jewelry trunk- from any other; said, I traveled with a party and nobody took that trunk.

Q. Nobody suspected he had a jewelry trunk?

A. Yes, sir; very valuable line of jewelry.

Q. Different from the ordinary jewelry trunk.

A. Yes, sir; it was in a boot-and-shoe trunk; that is what he said—great, immense, tall, narrow trunk.

Q. What kinds of trunks do the dry-goods men carry?

A. Well, dry-goods men don't carry much dry goods; some notions; some carries them large.

Q. Unusually large, are they not?

A. There is the regular—what we call the Jew clothing-house trunk; they are larger; but for general stationary and such like you will find 50 trunks like that where you will find twenty that are larger.

Q. Usually you can tell; each branch of business has a trunk of general characteristics?

240 A. Oh, no, sir; a boot-and-shoe house is about the only trunk that a person would notice, because they have a narrow, high —; they carry one shoe or one boot of a kind—that is, they don't carry them in pairs—and have a shoe trunk just the length of a shoe. That is the only line of trunks that a person would notice more than any other.

Q. The jewelry trunks are smaller than the other trunks—jewelry and hardware.?

A. No, sir; well, there is some larger than a certain line of others; the stationary is about the same.

Q. Stationary and jewelry and hardware about the same?

A. Yes, sir.

Redirect examination:

Q. You check a good many trunks there, do you?
A. Yes, sir.
Q. Generally check them in a hurry, about the time trains go out?
A. Yes, sir; have 4 trains, and the bus and baggage wagon gets there lots and lots of times on the platform the same time the train runs in.
Q. Running 4 trains this time?
A. Yes, sir; about that time.
Q. Other baggage on this trains?
A. Yes, sir.
Q. This is the only train to Petersburg?
A. Yes, sir.
Q. As a fact, from your knowledge of trunks, could you tell from looking at that trunk that it contained jewelry?
A. I could not.

241 Recross-examination:

Q. You had an assistant?
A. Yes, sir; 2 of them.
Q. You don't know whether this trunk was checked by yourself or by him?
A. Yes, sir; checked by me. I checked all there was on that train.
Q. Wasn't he there?
A. Yes, sir; I suppose he was there.
Q. What was he doing?
A. Probably checking for some one else. One of these parties will come in just before and ask me for 3 checks for Petersburg or 2 checks for Peoria, and so on. Well, I am standing right there and check them and book them, and have my hand ready on one trunk. Maybe my partner will stand there and he may check 6 or 8 or 10 and I won't check any. If you come there, and I was standing there booking checks, and say I would like two checks for Jacksonville, I would reach the checks and book them.
Q. How is it that you remember this particular trunk?
A. Can tell by the number on the book—our figures.
Q. In your handwriting?
A. Yes, sir.
Q. Are these figures all in your handwriting?
A. Yes, sir.
Q. Don't sometimes the man who checks it call off to the man who has the book?
A. No, sir; very seldom; has been very few.
Q. You have seen it done?
A. Oh, see it here and in these different places; it wouldn't happen probably once in three months.
Q. It does happen sometimes?
A. Yes, sir.

Q. Man who checks it simply calls off the number and the
242 man who has the book puts it down?

A. No; it won't happen once in 3 months.

Q. It does sometimes.

A. Yes, sir; sometimes. It would happen in this way: Probably be a person there — wants a check for Jacksonville, and you ask for Jacksonville check. I would be behind him and I would call the number and he would put it down—not once in 3 months.

Q. How often do you make the inquiry of men who have trunks as to whether it is jewelry in it?

A. Sometimes; not very often. Well, it will happen sometimes 2 or 3 times a week, and sometimes would happen probably once a week, and maybe it might run a week without asking.

Q. What will induce you to ask that question of a man?

A. It is our order.

Q. What appearance of the trunk? You don't ask it of everybody?

A. Oh, no.

Q. What would induce you to ask a man if he had jewelry in that trunk?

A. There are a few—that is, of course, a great many of them go by express. It is doubtless a number of trunks comes there. It is not very often we ask the question, because we don't expect jewelry trunks to be carried that way now.

Q. What would lead you to ask the question?

A. It is our orders.

Q. You say it is your orders. That don't lead you to——

A. Yes, sir; it does.

Q. You don't ask it of everybody. Here is a particular individual, Mr. Smith, comes in there and says, I want this trunk
243 checked. You would say, Have you got jewelry in that trunk? What would make you ask it?

A. I wonder in my own mind if he has jewelry in that trunk.

Q. On account of the appearance of the trunk?

A. Yes, sir; I have asked them if they had hardware in the trunk.

Q. You say it is the appearance of the trunk that makes you ask the question?

A. Certainly it would; yes, sir.

By the MASTER: When was the order issued by the company, as near as you can recollect it? What did that instruct you to do?

A. Instructed us not to receive any jewelry trunks whatever from this time, and to give a party the proper courtesy, and so on—to show them where they could turn them over to the express company.

Q. Then, endeavoring honestly and faithfully to carry out this rule which the company has ad-pted, whenever you see a trunk that, in your judgment, does or that you suspect may probably contain jewelry, you inquire; is that the fact?

A. Well, that is if I fully make up my mind. Sometimes we ask the question, and that is if we fully think the party *that* is traveling for a house, understand. There is a few that we know are jewelry men, and those parties, of course, we know they are

getting so they don't try to send their baggage. There is some we ask whether they have jewelry in them, and they will——

Signature waived.

The foregoing testimony was taken after the case had been closed, by stipulation of counsel.

E. B. SHERMAN, *Master.*

244 Afterward, to wit, on the thirtieth day of August, 1889, came the receivers, by their solicitor, and filed in said clerk's office their prayer for an appeal in said entitled cause; which said prayer for an appeal is in the words and figures following, to wit:

Prayer for an Appeal.

Circuit Court of the United States, Northern District of Illinois, —— Term, 1889.

THE WABASH, ST. LOUIS AND PACIFIC RAILWAY COMPANY *vs.* THE CENTRAL TRUST COMPANY OF NEW YORK *et al.* } Bill.

In the matter of the intervening petition of Perry Bros., petitioners.

And now come the receivers of the said complainant, by George B. Burnett, their solicitor, and pray an appeal to the Supreme Court of the United States from the decree heretofore, to wit, on the 29th day of July, 1889, made and entered in the above matter in favor of the said intervening petitioners, the said Perry Bros., and against the said receivers, and said appeal is allowed upon the said receivers filing with the clerk of this court their bond in the sum of ten thousand dollars, conditioned according to law, with security to be approved by the court.

(Endorsed:) Filed Aug. 30, 1889. Wm. H. Bradley, clerk.

245 On the same day, to wit, on the thirtieth day of August, in the July term of said court, 1889, in the record of the proceedings thereof in said entitled cause, before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

Order.

THE WABASH, ST. LOUIS AND PACIFIC RAILWAY COMPANY *vs.* THE CENTRAL TRUST COMPANY OF NEW YORK *et al.* } In Chancery.

In the matter of the intervening petition of Perry Brothers, petitioners.

Now come Solon Humphreys and Thomas E. Tutt, receivers of the said Wabash, St. Louis and Pacific Railway Company, and present their prayer for an appeal to the Supreme Court from the decree entered herein on the twenty-ninth day of July, 1889, in favor

of said Perry Brothers, intervening petitioners, for the sum of seven thousand two hundred and eighty-seven dollars and eighty-seven cents. It is thereupon ordered that the prayer for such appeal be allowed upon the filing by said receivers of an appeal bond conditioned according to law, with security to be approved by the court, in the penal sum of ten thousand dollars.

246 Afterward, to wit, on the eleventh day of September, 1889, there was filed in said clerk's office an appeal bond in said entitled cause; which said appeal bond is in the words and figures following, to wit:

Appeal Bond.

Know all men by these presents that we, Solon Humphreys & Thomas E. Tutt, receivers of the property of the Wabash, St. Louis & Pacific R'y Co., and William Fitzgerald, are held and firmly bound unto John H., Arthur J., James K., and Frank A. Perry, partners under firm name of Perry Brothers, in the full and just sum of ten thousand dollars to be paid to the said Perry Brothers, their heirs, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents.

Sealed with our seals and dated this 11th day of September, in the year of our Lord one thousand eight hundred and eighty-nine.

Whereas lately, at the July term, 1889, of the circuit court of the United States for the nor. district of Illinois, in a suit depending in said court between Perry Brothers as intervening petitioners in a cause in equity wherein The Wabash, St. Louis and Pacific R'y Co. is plaintiff and The Central Trust Company of New York & others were defendants, there was rendered against the said principal obligors herein a final decree in favor of the said
247 obligees, and the said principal obligors herein having obtained an appeal of the said court to reverse the said final decree in the aforesaid suit; and whereas said appeal was prayed in open court on the 30th day of August, 1889, to be and appear at a Supreme Court of the United States to be holden at Washington the second Monday of October next:

Now, the condition of the above obligation is such that if the said principal obligors shall prosecute said appeal to effect and answer all damages and costs if they fail to make good their plea, then the above obligation to be void; else to remain in full force and virtue.

THOS. E. TUTT, *Receiver.* [SEAL.]
SOLON HUMPHREYS, *Receiver.* [SEAL.]
WM. FITZGERALD. [SEAL.]

Approved.
W. Q. GRESHAM.

Approved by—
WM. H. BRADLEY, *Clerk.*

(Endorsed:) Filed this 11th day of Sept., 1889. Wm H. Bradley, clerk.

248 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for said northern district of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the record of all the proceedings had in said court in the matter of the intervening petition of John H. Perry, Arthur J. Perry, James K. Perry, and Frank A. Perry, partners under the name and style of Perry Brothers, in the cause wherein The Wabash, St. Louis and Pacific Railway Company is complainant and The Central Trust Company of New York *et al.* are defendants as the same appear from the records and files of said court now remaining in my custody and control.

Seal of Circuit Court U.S., Northern Dist. Illinois, 1855.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at my office, in Chicago, in said district, northern division, this nineteenth day of September, 1889.

WM. H. BRADLEY, *Clerk.*

Endorsed on cover: Case No. 13752. N. Illinois C. C. U. S. No. 167. Solon Humphreys and Thomas E. Tutt, receivers of the Wabash, St. Louis & Pacific Railway Company, appellants, *vs.* John H. Perry, Arthur J. Perry, James K. Perry, and Frank A. Perry, partners under the firm name of Perry Brothers. Filed October 12, 1889.

148 U.S. 627

Office Supreme Court U. S.
FILED.
MAR 11 1893
JAMES H. McKENNEY,
CLERK.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1892.—TERM NO. 167.

SOLON HUMPHREYS AND THOMAS E. TUTT, RECEIVERS OF THE WABASH, ST. LOUIS AND PACIFIC RAILWAY COMPANY,
Appellants,

vs.

JOHN H. PERRY, ARTHUR J. PERRY, JAMES K. PERRY AND FRANK A. PERRY, PARTNERS UNDER THE FIRM NAME OF PERRY BROTHERS.

Appeal from the Circuit Court of the United States for the Northern District of Illinois.

STATEMENT AND BRIEF FOR APPELLANTS.

WELLS H. BLODGETT,
Attorney.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1892.

SOLON HUMPHREYS and THOMAS E. TUTT, Receivers of the Wabash, St. Louis and Pacific Railway Company, Appellants,

vs.

JOHN H. PERRY, ARTHUR J. PERRY, JAMES K. PERRY, and FRANK A. PERRY, Partners Under the Firm Name of Perry Bros.

STATEMENT OF FACTS.

This was a proceeding by intervention against Solon Humphreys and Thomas E. Tutt as receivers of the property of the Wabash, St. Louis & Pacific Railway Company. The interveners were: John H. Perry, Arthur J. Perry, James K. Perry and Frank A. Perry, doing business under the firm name of Perry Brothers.

It is admitted by the pleadings that Humphreys and Tutt were appointed receivers of the property of the Wabash Railroad Company on the 29th day of May, 1884, and it appears from the evidence that on the 30th day of January, 1885 (eight months after their appoint-

ment), Arthur J. Perry, a member of the firm of Perry Bros., was in Springfield, Ill., with a trunk of jewelry (not samples, but a stock of goods from which he made sales and deliveries to his customers), and that desiring to go to Petersburg, Ill., a point on the line of the Wabash road, he bought a ticket from the agent of the receivers, and presented his trunk to be checked as his personal baggage to Petersburg. The trunk was of dark color, iron bound, and weighed 250 pounds, and as to size it was described in the evidence as being "what a sample man would call small." The agent gave Mr. Perry a check for the trunk and charged him 25 cents on account of extra weight, only 150 pounds of personal baggage being allowed to each passenger. Nothing was said by Mr. Perry to the agent concerning the contents of the trunk, nor did the agent make any inquiries of Mr. Perry in relation to its contents. When the train was within a few miles of Petersburg, the car in which the trunk was being conveyed was thrown from the track; the car was ignited from fire in the stove and the trunk and its contents, valued at seven thousand two hundred and and eighty-seven dollars and eighty-seven cents ($7287.87), were practically destroyed.

There was evidence tending to show that the stove in the baggage car was cracked, and that its door was without a latch or other fastening.

As to the cause of the derailment there was evidence tending to show that the night was cold, and that as the train was rounding a curve a rail broke under it and caused the disaster. There was also evidence tending to show that many of the ties in the track at that point

were so decayed that they would not firmly hold the spikes, and that the trouble was caused by a spreading of the rails.

The Master in his report attributed the disaster to the spreading of the rails, and found that the condition of the track was so unsafe that the receivers were presumed to have known of its condition. He found as a fact in the case, however, that the condition of the track had been improved by the receivers, and was better at the time of the accident than when they were appointed.

There was evidence tending to show that it was, and had been for a number of years, a practice among the wholesale jewelry merchants of Chicago and other cities, to send out agents or members of their firms among their country customers with trunks filled with goods, and that their agents had been accustomed to sell and deliver goods from the stocks thus carried about. The evidence also tended to show that such stocks of goods were generally carried in trunks similar in character to the one used by Mr. Perry, and that as a rule they had been checked as personal baggage; but there was no evidence tending to show that the railroad companies or their agents *knew what the trunk contained*, while, on the other hand, *Mr. John H. Perry*, one of the interveners, who testified as to what had been the custom, also testified (page 57 printed record) "that *he did not know of a railroad in this country that he could go to with a trunk and say, 'Here is a trunk containing $10,000 worth of jewelry, I want a check,'* and get a check for it."

No witness testified that *after the appointment of the receivers and before this loss occurred*, he had received checks over the Wabash road for trunks containing jewelry, nor was there any evidence tending to show *that the receivers knew* of any custom under which trunks containing jewelry were being checked as personal baggage.

THE PETITION.

The petition in the case contains only the following material averments:

1st. It states that the interveners were partners, doing business under the firm name of Perry Bros.

2nd. That on the date mentioned Arthur J. Perry, in carrying on the business of his firm, bought and paid for a ticket for his passage from Springfield to Petersburg, Illinois, and at the same time had checked a trunk containing *jewelry, watches and merchandise of said firm, such as was necessary for him to take with him in prosecuting the business of his firm, and such as is usually taken as baggage by traveling salesmen in prosecuting a similar business.*

3rd. That for the transportation of his trunk he paid the receivers a sum of money (twenty-five cents), in addition to that he had already paid for his ticket, and that thereupon he entered a coach to be carried to Petersburg.

4th. That his trunk was placed in a baggage car, and that by reason of the negligence of the receivers in constructing and repairing their road and running their train, the car containing the trunk was overturned, and

by the negligence of the receivers in using in said baggage car an unsafe and improper kind of stove, and in not having said stove properly secured, the car caught fire and was together with the trunk consumed.

5th. That the jewelry in the trunk was valued at the sum of $9218.46.

6th. The petition then recites the appointment of Humphreys and Tutt as receivers of the property of the Wabash, St. Louis & Pacific Railway Company, on the 29th day of May, 1884, by the Circuit Court of the United States for the Eastern District of Missouri.

THE ANSWER.

The answer of the Receivers contained the following admissions and averments:

1st. It admitted their appointment as Receivers of the property of the Wabash, St. Louis & Pacific Railway Company, as alleged.

2nd. The Receivers averred that at the time in question they were not prepared to carry jewelry and watches as personal baggage; that they did not undertake or advertise themselves as ready or willing to do so, and that by their rules then in force their agents were not allowed to take trunks containing jewelry and watches as baggage.

3rd. That on said day Arthur J. Perry, one of the interveners, presented to the agent at Springfield the trunk in question and demanded a check therefor, and that they only undertook to carry said trunk as containing his personal baggage, and that said Arthur J. Perry

then and there wrongfully concealed from said agent the fact that said trunk contained jewelry, watches and valu ble merchandise, and that by reason of such wrongful conduct and fraudulent concealment of the contents of said trunk and the value thereof, he secured a check for said trunk from said agent as baggage, and that by reason thereof said trunk was placed in a baggage car to be transported only as ordinary baggage.

4th. That, without any negligence on their part, the said baggage car became derailed and caught on fire, and that a portion of the contents of said trunk were consumed.

5th. As to the value of the contents of said trunk, the Receivers said they had no information, save as they were informed by the petition.

———

PLAINTIFF'S EVIDENCE.

The following is the only testimony pertaining to the material issues in the case, exclusive of that relating to the cause of the accident which was, as we have already said, conflicting.

ARTHUR J. PERRY, one of the interveners, testified (page 24 of printed record) as follows:

Q. State what occurred on January 30th, 1885, where you were and where you were going? A. I was at Springfield on my regular trip, going to Petersburg; went down to the Wabash depot with my case of jewelry—trunk of jewelry—bought my ticket and checked my trunk to Petersburg, paying 25 cents excess for one hundred pounds overweight; we are allowed to carry 150

pounds; I paid for my trunk which weighed 250 pounds; I took the train; when within two miles of Petersburg there was a bad accident and we were thrown over.

Q. What kind of a trunk was that? A. It was a heavy iron trunk, iron-bound, dark trunk, small size.

Q. Had it any particular designation that you know of? A. It is a trunk that we used in our business, is about all; very small and heavy.

Q. The kind of a trunk known as a jeweler's trunk, is it? A. Commonly used and known as a jeweler's trunk.

The witness then stated what he did after the accident; gave the value of the trunk and (on page 27) continued as follows:

Q. Are you acquainted with the wholesale and retail jewelry trade as conducted in Chicago? A. Since 1880.

Q. Just state how the wholesale jewelers in Chicago conduct their business with the outlying towns with whom they have trade? A. The majority of them conduct it the same as we do; that is, they put goods in trunks and send them with men on the road.

Q. They send traveling men, or members of the firm with a jeweler's stock in a trunk? A. Yes, sir.

Q. And go to different towns and sell from the trunk? A. Yes; sell, deliver and bill.

Q. And to your knowledge, that has been the custom since 1880? A. My knowledge goes farther back than that.

Q. How far beyond? A. Since 1873.

Q. Is that their manner of conducting business now? A. Yes, sir.

Q. Did I understand you to say, you sell by samples? A. It isn't the rule; there are a few that do it—not one in ten.

Q. They send a stock of jewelry and sell from the stock? A. Yes, sir; they sell from the stock.

Q. And what is the usage in regard to the transportation of these jewelry trunks? A. We check them the same as other sample trunks.

Q. Check as baggage? A. Yes, they allow us, as commercial baggage, they allow us 200 pounds when we have a thousand mile ticket; when we have a local ticket they allow us 150 pounds and we have to pay for all over that.

Q. They have been carried as baggage and checked as baggage since when? A. Since 1873.

Q. Have you traveled over this road before and carried your trunk in the same manner? A. I had. I know others transacting the same kind of business; met them at different points. It was the common and invariable usage so far as I know. That is the way the business is conducted.

On *cross examination*, the witness testified (page 28) as follows:

Q. What is the distance from Springfield to Petersburg? A. I can't tell the exact distance; about 25 miles.

Q. You say that was a small trunk? A. Yes, sir.

Q. What was its color? A. A dark trunk—a black or gray.

Q. Was it a small trunk, or an ordinary sized trunk? A. It was a small trunk for the weight of it, *and what sample men would call a small trunk.*

THEODORE KEARNEY testified (page 52, printed record,) as follows:

Q. Are you familiar with the custom, or usage throughout the United States, of selling goods (jewelry) at wholesale? A. Yes, sir.

Q. By traveling men? A. Yes, sir.

Q. State what that usage has been for that time (about thirty-three years)? A. The usual custom is to carry the stock of goods of various values, according to the class of the house, and sell from that stock to customers. It is the universal custom.

Q. What proportion of the dealing in jewelry is done in that manner? A. I think nine-tenths in the jewelry trade.

Q. And how is this jewelry carried from place to place? A. Carried as baggage—trunks checked as baggage; carried in compartments made in the trunks for that particular purpose.

Q. What kind of trunks are they carried in? A. What is known as Couch and Fitzgerald trunks; wooden trunks. I think they are made for that particular purpose.

Q. Iron-bound? A. Iron strapped, not bound. Properly iron corners and strips; covered by three or four strips in various ways.

JOHN H. PERRY, one of the interveners, testified in his own behalf (page 55) as follows:

Q. Will ask you if you are familiar with the usages and customs of the wholesale and jobbing jewelers in reference to selling their goods? A. To a fair extent I am.

Q. How are they sold? A. Our goods are sold in that way.

Q. How? A. Sold by traveling men from trunks on the road; stock carried by traveling men and delivered as the sales are made and bills sent into the house.

Q. How are these trunks transported from place to place? A. Checked as baggage.

The witness then stated (page 56) that some of the railroads had refused to receive and check their trunks without indemnifying bonds.

On *cross-examination* he testified (page 57) as follows:

Q. Mr. Perry, do you know of any railroad in the country that you could go to with a trunk and say, "Here is a trunk containing $10,000 worth of jewelry, I want a check," and get a check for it? A. I am not acquainted with any such road.

Q. You do not know of any such road? A. No, sir.

Being *re-examined* on that subject by his own counsel he testified (page 58) as follows:

Q. You said you didn't know of any road that would receive a trunk if a man would say it contained $10,000 worth of jewelry. Did you ever know of a railroad refusing to check a jewelry trunk? A. No, I did not.

DEFENDANT'S EVIDENCE.

J. W. PATTERSON, the baggage agent of the receivers at Springfield, testified (page 41) as follows:

What business were you engaged in during the time (eleven years) you have lived at Springfield? A. Station baggage man for the Wabash.

Q. Were you engaged in that business on the 30th of January, 1885? A. Yes, sir.

Q. Did you check a trunk on that day from Springfield to Petersburg? A. Yes, sir; that is, I checked a piece of baggage; could not say it was a trunk.

Q. Do you know the number of that check? A. Yes, sir.

Q What was it? A. It is 10763.

Q. Do you know Mr. Perry? A. No, sir; not that I know of; don't know him by name; might know him if I saw the gentleman.

Q. Was that the only piece of baggage checked for Petersburg that day? A. Yes, sir.

Q. That was for the evening train? A. Yes, sir evening train 2:10.

Q. Did you know whether or not, at the time you checked that trunk or piece of baggage, that it contained jewelry? A. No, sir, I did not know what it contained.

Q. Was it checked in the ordinary way that baggage is checked? A. Yes, sir.

On *cross-examination* he testified (page 242) as follows:

Q. When you see a trunk, a heavy trunk, heavily iron-bound, with heavy iron corners and iron clasps, iron along the corners and iron bandages all around it and two or three strong locks in front, what kind of baggage

would you suppose it to be in that trunk? A. Well, we could not suppose what was in the trunk.

Q. You wouldn't suppose that it contained ordinary wearing apparel, would you—a trunk of that sort? A. Well, I don't know as I would.

Q. Are not trunks of that description, trunks that are carried by commercial travelers generally? A. Bless you, they carry all kinds, sizes and sorts.

Q. Don't they carry that kind of trunks? A. Yes, sir; lots of that kind of trunks on the road.

Q. Those are not the trunks ordinarily used by travelers carrying wearing apparel? A. No, sir; but there is, once in a while you find castaway sample-trunks that are picked up; parties carrying them, but it is not very often the case.

Q. What do you mean by sample-trunks; what is a sample-trunk? A. What we call that is a trunk that contains different kinds of samples.

Q. How do you know when you see them? A. Well, we don't know them without somebody opens the trunk.

Q. When you see that sort you naturally suppose it has samples in it? A. Yes, sir.

Q. They are made much stronger than the ordinary trunks, are they not—different build? A. Yes, sir, different built trunk.

Q. Well known to all baggage men and railroad men as sample-trunks, are they not? A. Yes, sir.

Q. You know, as a matter of fact, do you not, that jewelry firms have transported their stock of jewelry in trunks of that make? A. Yes, sir.

Q. Passing over your lines daily? A. Yes, sir.

Q. Checked as ordinary baggage? A. Yes, sir, at that time but not now.

* * * * * * * *

Q. Don't you know from your experience (page 143) of eleven years, if a trunk containing jewelry come into your possession and you handled it, you would be able to tell what was in it? A. No, sir; and nobody else.

Q. If a trunk come into your possession of that sort, at least its character is so well known to you, you would make inquiry into it, wouldn't you? A. Of course, once in a while; we do not every time.

* * * * * * * *

Q. You know (page 146) at that time there were a great many jewelry trunks on the road, and had been previous to that time, in carrying stocks of jewelry in trunks? A. Couldn't say a great many, because I never saw but very few of them; could not see what they contained.

Q. You know, as a general thing, that jewelers travel on the road with stocks, don't you? A. Yes, sir.

Q. They transport their goods from town to town in trunks? A. Yes, sir.

Q. And sold from their trunks? A. I could not say about that—checked the baggage.

On his *re-direct examination* he testified (page 149) as follows:

Q. As a fact, from your knowledge of trunks, could you tell from looking at that trunk that it contained jewelry? A. I could not.

FINDINGS OF THE MASTER.

On the foregoing testimony the Master found the fol lowing facts:

1st. He found that the intervening petitioners were partners.

2nd. He found (page 7):

"That on the 30th day of January, 1885, said Arthur J. Perry, who was then traveling for said firm and engaged in the business of jobbing jewelry and watches from place to place in the State of Illinois, was at the City of Springfield, in said State of Illinois, and then and there purchased of the agent and at the station or depot of the Wabash, St. Louis & Pacific Railway, then under the control of said receivers, a ticket for his passage from Springfield, Illinois, to Petersburg, Illinois, over and upon said road of said railway company; that, having purchased such ticket, he presented to the station agent of said railway company a trunk containing jewelry, watches and merchandise, belonging to said firm, such as was necessary for him in the prosecution of the business aforesaid, and such as is commonly carried by persons traveling from place to place and engaged in the business of jobbing watches and jewelry; that this trunk of jewelry weighed 250 pounds; that the station agent weighed and checked said trunk and charged 25 cents for the 100 pounds overweight, 150 pounds of baggage only being allowed to each passenger; that this trunk was a heavy, dark, iron-bound trunk, of small size, such as is commonly used by jobbers of jewelry and watches, and known as a jewelers' trunk; *that the station agent at Springfield, when said trunk was presented to be checked, made no inquiries of said Arthur J. Perry as to what the said trunk contained or whether the same contained jewelry, and that no representations were made by said Perry as to the contents thereof.*

3rd. He found that the train was derailed, that the baggage-car took fire and that the trunk and its contents were substantially destroyed.

4th. He found that the disaster was caused by the spreading of the rails, occasioned by the defective condition of the ties.

5th. He found (page 9), that it was and had been the custom of wholesale jewelry dealers to send men out through the country with stocks of jewelry in trunks; that the custom was so general that it must be presumed that not only the agents of the railroads, but the officials were cognizant thereof. That in carrying on the trade, trunks filled with jewelry had been commonly received as baggage and checked as such, but that such trunks were so received and checked "*without any inquiry on the part of the agents of the railroads, or any declarations on the part of the traveling men who presented the same*, yet that the business had been transacted in that manner so generally, and the kind of trunks commonly used by such traveling men was so well known to those accustomed to handling baggage, that those familiar with receiving and checking baggage *must be presumed to have been aware of the contents of such trunks.*" And that station agents and baggage men were put upon inquiry as to the contents of such trunks, *if it was their duty to inquire.*

6th. That the construction and character of the trunk in question, and the fact that it weighed 250 pounds and required the payment of 25 cents extra on account of its excessive weight, were circumstances which could not fail to attract the attention of the agent who received and checked it and to put him upon inquiry as to the

nature of its contents, *if it was his duty to make such inquiry.*

7th. He found that the car was set on fire from the stove, and that the stove was defective.

8th. He found the value of the goods destroyed to be $7287.87.

9th. He found that there was no water bucket carried in the baggage-car, and if there had been one, perhaps the fire could have been extinguished before the goods were injured.

10th. He found (page 11) that the road on which the disaster occurred did but littte business; that when the accident happened the road was in as good condition *as when the receivers took possession of it, and that, some repairs had been made thereon by the receivers* but that the road was nevertheless in bad condition, and that the disaster was attributable to that cause.

On the foregoing findings of fact, the Master held that interveners were entitled to recover their loss, which he found to be $7287.87.

EXCEPTIONS TO MASTER'S REPORT.

To the findings of the Master the receivers excepted, for the following, among other, reasons:

1st. Because the findings of the Master were contrary to the evidence taken in the cause.

2nd. Because the findings of the Master were contrary to the law.

3rd. Because the findings of the Master were contrary to the law and the evidence.

4th. Because upon the evidence before the Master and the law applicable thereto, the findings of the Master should have been that the petition be dismissed, and

5th. Because upon the facts found by the Master and the law applicable thereto interveners are not entitled to the relief prayed for.

OPINION OF THE COURT.

The Court overruled all exceptions to the Master's report and in so doing rendered an opinion, of which the following is the substance:

"The station agent, who had served as such at the same place for more than eleven years, checked the trunk, which weighed 250 pounds, to Petersburg *as ordinary personal baggage*, charging 25 centsfor overweight, 150 pounds being the amount allowed to a passenger. The nature and contents of the trunk were not expressly disclosed to the agent, and he made no inquiries upon the subject. The trunk was *three feet by two and* a half *, iron-bound, weighed 250 pounds, and known in the trade as a jeweler's or commercial traveler's trunk."

The Court then refers to the practice of jewelry houses to send out traveling men with stocks of goods in trunks; refers to the wreck of the train, the value of goods, and then proceeds as follows:

"If the station agent did not know that the trunk contained jewelry he had reason to believe it did. He received it knowing that Perry was not entitled to have it carried as personal baggage. The agent did not believe the trunk contained wearing apparel only. It is plain from the evidence that he recognized it as a jewelers's

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*We do not find in the record any testimony concerning the dimensions of the trunk in question.

trunk, and that he understood it contained a stock of jewelry. He was not, therefore, deceived and the receivers were not defrauded. Having checked the trunk by their agent as personal baggage, knowing or having reason to believe that it contained jewelry, the receivers became bound to safely transport it to its destination, which they did not do, and they are liable for the damages that resulted from a breach of the contract. They sustained to the trunk and contents the relation of carrier, and they are liable for the property destroyed by their negligence just as if the trunk had contained nothing but wearing apparel or as if they had undertaken to carry it as freight."

In conformity with the foregoing opinion a final decree was rendered against the receivers for the sum of $7287.87, and from that decree an appeal was prosecuted to this court.

ERRORS ASSIGNED.

I. The Circuit Court erred in its findings of fact.

II. The Court erred in basing its judgment either wholly or in part upon the assumption that the baggage agent had *actual knowledge* of what the trunk contained.

III. The Court erred in holding that the baggage agent of the receivers ought to have known what was in the trunk *by looking at the outside of it.*

IV. The Court erred in holding that passengers are not required to act in good faith when dealing with common carriers ; or, in other words, the Court erred in holding in this case, that Mr. Perry could present a trunk to the baggage agent of the receivers as containing his personal baggage and get a check for it as such, and

then recover in a court of chancery for a stock of jewelry.

V. The Court erred in its conclusions of the law, as even on the facts as found by the Court and Master, the petition should have been dismissed.

BRIEF.

I.

The Circuit Court erred in basing its judgment, either wholly or in part, upon the assumption that the baggage agent had actual knowledge of what the trunk contained.

The conclusions of law reached by both the Court and the Master, are based upon the assumption that the baggage agent received the trunk *knowing or having reason to believe*, that it contained a stock of jewelry; but that assumption is wholly unsupported by the testimony.

The Court stated the ground on which the Receivers should be held liable in the following paragrah of its opinion:

"Having checked the trunk by their agent as personal baggage, *knowing or having reason to believe* that it contained jewelry, the Receivers became bound to safely transport it to its destination, which they did not do, and they are liable for the damage that resulted from a breach of the contract."

To the foregoing conclusions of the Court we except on two grounds:

1st. Because there is no testimony in the record to support the assumption of fact, respecting the knowledge of the agent; and

2nd. Because the conclusions of the Court are unsound in law.

In the first place there was no evidence in the case showing, or even tending to show, that the baggage agent of the Receivers had any *actual knowledge* concerning the contents of the trunk. Mr. Arthur J. Perry, who testified in his own behalf, did not even suggest *that he either told the agent what the trunk contained, or that he opened it in his presence.* Mr. Perry stated no fact from which even an *inference* could be drawn to to the effect, that the agent had *actual knowledge* that the trunk contained a stock of jewelry. All that Mr. Perry stated, respecting the transaction between himself and the agent, was in answer to a single question.

He was asked (page 24, printed record), to state what occurred on the 30th day of January; where he was and where he was going. And to that question Mr. Perry eplied: "I was in Springfield on my regular trip going to Petersburg; went down to the Wabash Depot with my case of jewelry—trunk of jewerly—bought a ticket and checked the trunk to Petersburg, paying 25 cents excess for one hundred pounds overweight. I paid for my trunk which weighed 250 pounds. I took the train."

No other witness introduced on the part of interveners testified to anything touching the actual knowledge of the agent, and when the agent was called by the Receivers, he was asked (page 141, printed record) *whether at the time he checked the trunk he knew that it contained jewelry;* and his answer was, "No, sir; I did not know what it contained.'

On that testimony, the Master (page 17) made the following finding:

"It is clear from the evidence, that Mr. Perry did not disclose the character of the contents of the trunk, nor

did he say anything in regard thereto, but simply presented the trunk as had been customary with him and other salesmen, to be received and checked as ordinary baggage, as it had been customary for agents to do on this and other roads."

And in its opinion, the Court said:

"The station agent, who had served as such for more than eleven years, checked the trunk, which weighed 250 pounds, to Petersburg, as *ordinary personal baggage*, charging 25 cents for overweight; 150 pounds being the amount allowed to a passenger. *The nature and contents of the trunk were not expressly disclosed to the agent and he made no inquiries upon that subject.*"

Surely under the foregoing testimony, and findings of the Court and Master, it can not now be contended that the agent had *actual knowledge of what the trunk contained*, and therefore the liability of the Receivers can not be grounded on that proposition.

II.

The Circuit Court erred in holding that the baggage agent of the receivers ought to have known what was in the trunk by looking at the outside of it.

(a.) In its opinion the Court said:

"It is plain from the evidence, that he (the baggage agent) recognized it as a jeweler's trunk and that *he understood it contained a stock of jewelry.* He was not, therefore, deceived and the receivers were not defrauded. Having checked the trunk by their agent as personal baggage, *knowing or having reason to believe* that it contained jewelry, the receivers became bound to safely transport it to destination."

As the case is here for review upon the whole testimony, and as we have already shown, in the preceding paragraph, that the baggage agent had no *actual knowledge* of what was in the trunk, our next inquiry ought

to be as to whether there was any evidence in the case from which it could be fairly said: "That the baggage agent *understood, or had reason to believe*, the trunk contained jewelry."

It is an admitted fact that Mr. Perry tendered the trunk to the agent as containing his personal baggage, and the Court and Master found that he was not informed to the contrary by Mr. Perry, or any one else and yet, if it be true as the Court says, "that the agent recognized it as a jeweler's trunk and *understood it contained jewelry*," then it is clear that his "recognition," and his "understanding" as to its contents, arose entirely from the outward appearance of the package. On that point we here quote *every word* of testimony found in the record concerning its make and construction.

There was only one witness examined who attempted to give any description of *this particular trunk* and that was Mr. Arthur J. Perry. In his direct examination (page 24, printed record) Mr. Perry testified as follows:

"Q. What kind of a trunk was that? A. It was a heavy iron trunk—iron bound, dark trunk, small size.

Q. Had it any particular designation that you know of? A. It is a trunk that we use in our business, is about all; very small and heavy.

Q. The kind of a trunk known as a jeweler's trunk, is it? A. Commonly used and known as a jeweler's trunk."

Upon cross-examination (page 28) Mr. Perry testified, as follows?

"Q. You say that was a small trunk? A. Yes, sir.

Q. What was its color? A. A dark trunk, a black or gray.

Q. Was it a small trunk, or an ordinary sized trunk? A. It was a small trunk for the weight if it, and what sample men would call a small trunk."

That is all that was said by any witness, concerning the size, shape or appearance of this particular trunk.

Mr. Theodore Kearney, a witness for the petitioners, testified (page 52 printed record) as follows, concerning the kind of trunk *generally carried* by traveling men in the jewelry trade:

"Q. What proportion of the dealing in jewelry is done in that manner (by traveling men from trunks)? A. I think nine-tenths of the jobbing trade.

Q. And how is this jewelry carried from place to place? A. Carried as baggage—trunks carried as baggage; carried in compartments made in the trunk for that particular purpose.

Q. What kind of trunks are they carried in? A. What is known as the Couch and Fitzgerald trunks—wooden trunks. I think they are made for that express purpose—almost universally made and used for that purpose.

Q. Iron bound? A. Iron strapped, not bound. Properly iron corners and strips—covered by three or four strips in various ways."

No other witness introduced by interveners testified to anything concerning the appearance of the trunk in question, or with respect to the appearance of jeweler's trunks in general.

Mr. Patterson, the baggage agent at Springfield, was the only witness introduced by the receivers, and he had no personal recollection of either Mr. Perry or his trunk. He testified (page 141, printed record) as follows:

"Q. Did you check a trunk on that day (Jan. 30, 1885) from Springfield to Petersburg? A. Yes, sir. That is I checked a piece of baggage, couldn't say it was a trunk."

On cross-examination the same witness testified (146) as follows:

"Q. So then you have no particular recollection about that particular trunk of Mr. Perry's? A. I do not.
Q. Don't recollect Mr. Perry? A. No, sir."

Accepting then all the foregoing testimony as correct, the case stands as follows: The agent of the receivers accepted from Mr. Perry at Springfield, to be checked to Petersburg as *his personal baggage*, a trunk of the following description: "A wooden trunk, of dark color, iron bound, heavy for its size, and in size 'what a sample man would call small,'" and on those facts a single inquiry arises, which may be stated as follows:

If a stranger presents to a baggage agent, as containing his personal baggage, a wooden trunk, of dark color, iron bound, heavy for its size, and in size "what a sample man would call small," is the agent bound to know, or *is he presumed to know that such a trunk contains a stock of jewelry?* If not, then the judgment of the Circuit Court in this case should be reversed.

On what principle should a court *presume*, contrary to the positive evidence in the case, that an ordinary baggage agent could tell what was in a trunk *by looking at it or handling it?* In this case there was no evidence to support such a finding, but on the contrary, the evidence was *exactly the reverse*. On his cross examination (page 143, printed record), the agent testified as follows:

"Q. Don't you know from your experience of eleven years, if a trunk containing jewelry comes into your possession and you handle it, you would be able to tell what was in it? A. No, sir, and nobody else."

And that is all the testimony there was on the subject of his ability to know what the trunk contained, without being told.

The finding of the Court, to the effect that the baggage agent knew, or ought to have known, what the trunk contained by merely looking at it or handling it, was also contrary to a well-known rule of the common law At common law, as a general proposition, parties in interest were disqualified from testifying in their own behalf, but there was always an exception in favor of those who brought suits against common carriers for the loss of personal baggage, and that exception was based solely upon the idea that only the person who packed the trunk could tell what was in it. If it had been discovered that common carriers, baggage agents, or other people, could tell what trunks and packages contained by merely looking at the outside of them, there would never have been any such exception in favor of those who lost their baggage, because there would have been no necessity for it.

Therefore, we hope this Court will not approve the doctrine, that when passengers present their trunks to common carriers as containing their personal baggage the carrier shall be *presumed to know* from the outward appearance of the trunks that they do not contain *what the passengers say they do.* Such a presumption is without reason. It would serve no good purpose, and in practical application it would open the door to gross frauds.

(b.) To properly determine the issues in this case, the Court should not confound the trunk *which Mr. Perry delivered to the agent* with the *hypothetical trunk*

which counsel for interveners introduced into the case in his cross-examination of the baggage agent.

In order to extract from the agent an admission from which it could be "inferred," that the agent "suspected" what the trunk contained, counsel for interveners in his cross-examination of the baggage agent introduced into the case for the first time a trunk, which was quite different from the one actually delivered by Mr. Perry to the agent.

The following is an example of his interrogatories and of the testimony (page 142, printed record) no that point.

"Q. When you see a trunk, a heavy trunk, heavy iron bound, with heavy iron corners and iron clasps, iron along the corners and iron bandages all around it, and two or three strong locks in front, what kind of baggage would you suppose to be in the trunk? A. Well, we couldn't suppose what was in the trunk.

Q. You wouldn't suppose that it contained ordinary wearing apparel would you—a trunk of that sort? A. Well, I do not know as I would.

Q. Are not trunks of that description, trunks that are carried by commercial travelers generally? A. Bless you, they carry all kinds, sizes and sorts."

Now it will be seen that the trunk delivered by Mr. Perry to the agent was a very different affair from the "hypothetical trunk" about which the witness was examined. One was rather demure and unattractive, while the other was exceedingly robust and impressive. Mr. Perry described his trunk (page 24) as being "iron-bound, dark color, small size and heavy," with no particular designation excepting that it was the sort of a trunk he used in his business: He did not say whether the iron bands upon his trunk were light or heavy; he said

nothing about iron corners, or iron clasps, and leaves us wholly to conjecture as to whether there was even a lock on it. While on the other hand, the "hypothetical trunk" was more like a proof safe. It had *heavy iron* bands, *heavy iron* corners, *iron* clasps, *iron* along the corners, *iron* bandages all around it, and *two or three strong locks* in front.

It is needless for us to conjecture as to what a baggage agent *might suppose* would be in a trunk of that description, because it does not resemble the one delivered by Mr. Perry to the agent.

III.

The Court erred in holding that passengers are not required to act in good faith when dealing with common carriers. In other words, the Court erred in holding in this case that Mr. Perry could present a trunk to the baggage agent of the receivers as containing his personal baggage and get a check for it as such, and then recover in a court of chancery for a stock of jewelry.

We know of no rule of law, or custom of business, which requires a railroad baggage agent to make inquiries, or enter into investigations, concerning the contents of trunks or packages offered by passengers for transportation, as their personal baggage. Our common knowledge concerning the manner in which such business is done; the infinite variety in the size, weight, shape and color of the trunks presented; the haste with which such agents are required to act; the impatience of travelers who are about to enter departing rains, and the fact that every person is at liberty to

pack his personal effects in any sort of box or trunk that may suit his convenience, would render any attempt on the part of baggage agents to ascertain the actual contents of the trunks presented an intolerable nuisance to the whole traveling public. Such a course would not only be inconvenient and annoying to passengers, but it would without any corresponding benefit, greatly increase the number of agents required, and the general cost of the service.

When a passenger offers a trunk as containing his personal baggage, his conduct amounts to a representation that it is such, and on that representation the agent, in the interest of the public service, ought to act, and act quickly. With the agent there is usually no time for questions or for personal inspections, and if there was, the public would not submit, with patience, to any such inquisitive methods.

The fact that Mr. Perry and other traveling men may have, on other occasions, obtained checks *from other railroad companies*, for trunks containing merchandise, by representing them as containing their personal baggage, would not seem to furnish a sufficient reason for permitting Mr. Perry to recover in this case *on a falsehood*. Having presented the trunk and got a check for it as containing his personal baggage, there is no hardship in holding him bound by the representation which his conduct then implied, and it would seem unjust and inequitable to permit him to shift his loss over upon the party whom he deceived.

There was, as we have before stated, evidence in this case tending to show that he and other traveling men

had, on other occasions, received checks for trunks containing jewelry, but *there was no evidence tending to show that on those occasions the carriers issuing the checks knew what such trunks contained.*

On the other hand Mr. John H. Perry, one of the interveners, testified that he did not know of a railroad company in the country that would receive and check a trunk *filled with valuable jewelry as baggage.* After having said in his direct examination that traveling men for jewelry houses had been accustomed to have their trunks checked as baggage, without saying or even intimating that they were so checked *with the knowledge* of the railroad companies, he then testified (p. 57, printed record) on his *cross-examination*, as follows:

"Q. Mr. Perry, do you know of any railroad in this country that you could go to with a trunk and say, 'Here is a trunk containing $10,000 worth of jewelry—I want a check' and get a check for it? A. I am not acquainted with any such road.
Q. You don't know of any such road? A. No, sir."

Looking then, at the record of this particular transaction, we find the indisputed facts to be as follows:

First. Mr. Perry offered the trunk as containing his personal baggage;

Second. There is no claim that he informed the baggage agent as to its actual contents;

Third. The agent testified positively that *he did not* know what the trunk contained;

Fourth. There was no evidence that any agent of the receivers had, on any former occasion, received and

and checked a trunk as personal baggage, *knowing that it contained a stock of jewelry;* and

Fifth. Mr. John H. Perry, one of the interveners, testified (page 57) that he knew of no railroad company in the country that would issue a check for a trunk, *if informed in advance that it contained a valuable stock of jewelry.*

Therefore, neither upon the facts in this particular case, nor on any proof concerning the manner in which other checks had been obtained on other occasions, do we find anything which ought, in a court of equity, to relieve Mr. Perry from the position in which he deliberately placed himself, when he presented the trunk in question as containing only his personal effects, or which should permit him to now deny the truth of the representations he then made, and on which he induced the agent of the receivers to accept his trunk and place it in a car to be transported as ordinary baggage.

IV.

The fact that Mr. Perry paid 25 cents on account of excessive weight of his trunk, does not authorize him to now have treated as jewelry, that which he then represented as personal baggage.

Mr. Arthur J. Perry testified (page 24) that when he presented his trunk he paid 25 cents excess for one hundred pounds overweight; that he was allowed to carry one hundred and fifty pounds and that his trunk weighed two hundred and fifty pounds.

On the fact of that payment it was argued below, and will probably be urged here, that the Receivers became

insurers and liable for the *actual contents* of the trunk, whatever its contents might be. But that contention is manifestly unsound. It is the *personal baggage* of the passenger which the carrier undertakes to carry on the train with the passenger and deliver to him at the end of the journey. And when the passenger presents more pounds of *personal baggage* than he is authorized to have carried with him on the train, and is charged 25 cents on account of the excess, there is nothing in the nature of the transaction that should authorize him *after a loss occurs*, to treat as a stock of jewelry, that which he represented as his wearing apparel, and such personal effects as were necessary for his comfort and convenience on the journey.

In all contracts of affreightment, shippers are bound to act in good faith, and one who ships a package containing household goods as common merchandise, can not recover, in case of loss, for diamonds or gold coin. The sound rule in such cases is stated in *Story on Bailments* (9th Ed. Sec. 565) to be as follows:

"It is the duty of every person sending goods by a carrier to make use of no fraud or artifice to deceive him, whereby his risk is increased, or his care and dilligence may be lessened. And if there is any such fraud or unfair concealment, it will exempt the carrier from responsibility under the contract, or, more properly speaking, it will make the contract a nullity. Thus, where notes to the amount of one hundred pounds were packed in an old mail-bag, and stuffed with hay to give it a mean appearance, and in this state were delivered to a carrier, and the bag arrived safe, but the notes were stolen; this concealment was held to be such a fraud upon the carrier as to discharge him from all responsibility for the loss. In this case there was an artifice made use of in order to mislead the carrier. The doc-

trine is not confined to mere cases of concealment or suppression of facts for the purpose of misleading, but it applies to all cases of false affirmations, having the same object. And wherever the owner represents the contents of the package to be of a particular value, he will not be permitted, in case of a loss, to recover from the carrier any amount beyond that value."

In the case of *Talcott vs. Wabash Railroad*, (New York Supplement, Vol. 21, No. 3, Jan., 1893, p. 318), the facts were as follows: In April, 1889, one Cullom, a traveling salesman, checked a sample case containing merchandise, belonging to plaintiff and other parties, as baggage from Chicago to New York, paying $16.00 as an excess rate therefor. The agent of the defendant at the time he checked the sample case was told by Cullom that it contained samples of underwear. The case was destroyed in an accident on the Grand Trunk Railway, a connecting line. The plaintiff sued in the Circuit Court of New York and obtained judgment there for the contents of the sample case. The judgment was reversed in the Supreme Court of New York on the 16th day of December, 1892, in which it was held by Van Brunt, O'Brien and Barrett, Justices, that

"Samples of merchandise contained in the trunks of commercial travelers and belonging to his employer, do not form a part of his baggage, and where such samples are checked as baggage on a railroad over which he takes passage, the mere fact that he paid an excess baggage charge demanded because the weight of the trunks exceeded the limits fixed for free transportation, and that he informed the baggage agent that the trunk contained samples, does not show that the company undertook to carry such samples as freight, so as to render it liable to the owner for their loss or destruction."

So in the case of *Belfast and Balymena Railway Company vs. Keys* (9th H. L. cases, 556) it was held, that where a passenger with knowledge that the railway company only allowed each passenger to carry, free of charge, a certain amount of luggage, and required all merchandise to be paid for, took with him, as if it was personal baggage, a case of merchandise and did not pay for it as such, that no contract whatever touching the same arose between him and the company, and, therefore, on its being lost he was not entitled to recover the value of it.

The rule is too familiar to require elaboration, and we see no good reason for refusing to apply it to one who paid 25 cents for what he then represented as his personal baggage, but for which he now seeks to recover as a stock of jewelry. There would seem to be no merit in the contention, that by paying 25 cents, Mr. Perry was authorized to practice what amounted to a fraud on the receivers.

V.

The Court erred in its conclusions of law, and even on the facts as found by the Court and Master, the petition should have been dismissed.

We have already stated that we excepted to the opinion and judgment of the Circuit Court on two grounds:

1st. Because there was no testimony in the record to support its assumptions of fact with respect to the knowledge of the agent concerning the contents of the trunk, and

2nd. Because the conclusions of the Court were not sound in law.

We have already shown in the first and second paragraphs of this brief that there was nothing in the record to justify the assumption "that the baggage agent knew, or had reason to believe, that the trunk contained jewelry," and we will next refer to a few of the decided cases which seem to show that the Circuit Court erred in its legal conclusions:

In *Bluemantle vs. Fitchburg Railroad* (127 Mass., 322), the plaintiff was a peddler who had bought a ticket from Boston to Maynard. He delivered to the defendant's baggage master at Boston two packages for which he received checks to Maynard, and upon arriving there he delivered one of the checks to the station agent and received one of the packages and went away. Two days afterwards he went to the station agent and presented his remaining check and demanded the other package, but it was not delivered to him and nothing was ever learned concerning it. The plaintiff admitted *that nothing was said* to the defendant as to the character of the package, but for the purpose of showing that the baggage master, when receiving and checking the same, *knew its contents*, he offered evidence tending to show that from the manner of tying up the bundle some of its contents were visible, *and that it appeared to be a peddler pack and that the baggage master then said to him, "you will make lots of money, there are lots of peddlers."* There was also evidence tending to show that several peddlers having bundles similar to that which the plaintiff claimed to have lost, went to Maynard on the same train with plaintiff.

In deciding that case the Court (Gray, C. J.) said:

"The ordinary contract made by a railroad corporation with a passenger by the sale and purchase of a passenger ticket, is for the transportation of the passenger and of his reasonable personal baggage; and the corporation is liable as a common carrier for such personal baggage only, and not for merchandise delivered by the passenger as baggage, without clear proof of an agreement to that effect. If merchandise, not disclosed, is included in the passenger's baggage, the corporation is not responsible for it as a common carrier. *Collins vs. Boston & Maine Railroad*, 10 Cush., 506, *Stimson vs. Connecticut River Railroad*, 98 Mass., 33; *Connolly vs. Warren*, 106 Mass., 146; *Macrow vs. Great Western Railway*, L. R. 6 Q. B. 612. Such an agreement cannot be proved or such a responsibility created by mere evidence of a custom of passengers to take with them, and of railroad corporations to carry, similar packages as personal baggage, or by evidence that the package, delivered by the passenger as baggage, is of such form or appearance as to raise a doubt or suspicion or inference that it contains merchandise. *Stimson vs. Connecticut River Railroad*, above cited; *Alling vs. Boston & Albany Railroad*, 126 Mass., 121; *Michigan Central Railroad vs. Carrow*, 73 Ill., 348; *Cahill vs. London & Northwestern Railway*, 10 C. B. (N. S.), 154 and 13, C. B. (N. S.), 818; *Belfast & Ballymena Railway vs. Keys*, 9 H. L. Cas., 556."

The Court then reviewed a number of the leading cases relied upon by the plaintiff, and concluded its opinion, as follows:

"In the case at bar the plaintiff offered and delivered the bundles as his personal baggage, and requested that they might be checked as such, and the baggage master gave him checks for them accordingly, as he was bound to do for personal baggage of passengers by the St. of 1874, c. 372, sec. 136. There was no evidence that either the plaintiff or the baggage master agreed or intended that they should be carried as freight, or that the baggage master had any authority to receive freight on a passenger train, or to bind the corporation to carry

merchandise as a personal baggage. The case can not be distinguished in principle from the previous decisions of this court, already cited. Evidence tending to show that the baggage master knew or supposed the bundles to contain merchandise, or that other passengers had similar bundles, would not warrant the jury in finding that the defendant agreed to transport the plaintiff's merchandise or become liable therefor as a common carrier."

In *Alling and Others vs. Boston & Albany Railroad Company* (126 Mass. 121), the controversy was concerning a trunk of jewelry, and the Court there states the principle on which we rely for a reversal of the decree of the Circuit Court in this case. In that case the facts were as follows: *Kerr* testified that he was a traveling salesman for the plaintiffs, who were manufacturers of jewelry; that he bought from defendant in Boston a ticket for New York by way of Worcester, Hartford and Springfield, and had with him a trunk containing jewelry of the value of about $10,000, which he had checked for Worcester. He stopped at Worcester and the trunk was delivered to him. On resuming his journey in the afternoon he took the trunk to the defendant's station at Worcester and requested that it should be checked for Hartford, which was done. He then took the cars and went as far as Springfield, where he remained all night, and went next morning to Hartford, and on demanding his trunk a bag was presented to him. He further testified that when he delivered the trunk to the defendant's servant at Worcester, no inquiry was made of him as to what it contained; that the trunk was a sample trunk used for carrying merchandise, and weighed with its contents one hundred and thirty-five pounds, and that he had been to Worcester several times, by defendant's

road, and always carried the trunk containing jewelry with him.

Samuel Knowlton, the defendant's assistant baggage-master, testified that he checked Kerr's trunk at Worcester for Hartford; that it was a sample trunk, iron bound and heavy; that he lifted it, made no extra charge for it, and did not know that it contained merchandise, or what was in it. There was some other testimony as to how the trunk come to be lost, which was wholly immaterial in view of the conclusions reached by the Court. The plaintiffs declared on contract, and their declaration also contained counts in tort. In deciding that case the Court said:

"This case can not be distinguished from *Stimson vs. Connecticut River Railroad*, 98 Mass. 83. The only contract which the defendant had entered into in relation to the property which is the subject of this suit was a contract with Kerr, the plaintiff's agent. This was a personal contract with Kerr for the safe transportation of himself and his personal baggage over the railroad. There was no evidence whatever of any contract by which the defendant agreed to receive and transport Kerr's trunk as merchandise.

Upon the contract implied by the sale of a ticket to Kerr the plaintiffs can maintain no action, and Kerr could not recover for the loss of the jewelry contained in his trunk. *Jordan vs. Fall River Railroad*, 5 Cush. 69. *Collins vs. Boston and Maine Railroad*, 10 Cush. 506.

There was no evidence which would justify a verdict for the plaintiffs upon the counts in tort. It appeared at the trial that Kerr bought of the defendant, in Boston, a ticket for New York by way of Worcester and Springfield. He stopped over a train at Worcester. In the afternoon he delivered the trunk to the baggage-master of the defendant at the station in Worcester, asking him to check the trunk through to Hartford. He gave no notice that it contained valuable property other than personal baggage, and did not ask the defendant's agent

to receive and transport it as merchandise. The agent received and checked it, in the usual course of business, as the baggage of a passenger.

The defendant thus received it under the contract implied in the sale of a ticket that it would safely transport the passenger and his proper personal baggage. The plaintiff's contend that the jury might find that the defendant's agent knew from the appearance of the trunk that it was the trunk of a person 'known as a commercial traveler,' and contained merchandise. There was no evidence that he knew this. The most that the evidence shows is, that he may have suspected from the appearance of the trunk that it contained merchandise other than baggage. But this fact would not affect the rights of the parties. Kerr offered and delivered the trunk as his personal baggage; he thus represented by implication that it contained no property not included within that class or description.

The carrier was justified in receiving the trunk as baggage, under this representation, although he doubted its truth, and the only liability he would assume would be the liability which would attach if it were true. Under such circumstances, the carrier, if liable at all for property other than baggage thus put into his custody, with a fraudulent concealment of its character and value, is only liable for gross negligence or fraud, of which there is no evidence in this case. *Dunlap vs. International Steamboat Co.* 98 Mass. 371.

The plaintiffs offered to show "that a large part of defendant's business consisted in transporting a large class of passengers known as commercial travelers, with trunks like this, containing merchandise of great value, and that these trunks are known as sample or merchandise trunks and are of special construction, and in the course of that business the commercial travelers purchase tickets for the ordinary passenger trains and receive checks for their said trunks, and the defendant undertakes to transport the traveler and trunk accordingly for the price of the ticket."

The court properly rejected this evidence. The same evidence in substance was offered and rejected in *Stimvs. Connecticut River Railroad*, above cited.

It would undoubtedly be competent for a railroad

corporation to agree to transport, at its risk, merchandise by a passenger train for the price of the ticket sold to the passenger. And if the defendant had made such an agreement specially with Kerr, or if it had by notice or otherwise made a general agreement that commercial travelers might carry merchandise upon passenger trains at its risk, it might be liable in this action. But the offer of proof does not go far enough to show such an agreement.

The fact that commercial travelers or others are accustomed to carry merchandise in passenger trains without paying any more than the ususl price of a ticket for a passenger, even if known to the carriers, will not render them liable for such merchandise. The travelers carry such merchandise at their own risk. The established rule of law which limits the responsibility of the carrier, upon the contract implied by the sale of a ticket to a passenger, to the proper personal baggage of such passenger, can not be annulled, and the liability of the carrier enlarged, without proof of an agreement to that effect entered into by the carrier.

For these reasons we are of opinion that, upon the evidence in this case, the jury would not be justified in finding the defendant liable either in contract or tort."

In *Stimson and another vs. Connecticut River Railroad Co.* (98 Mass. 83) the plaintiffs intrusted to Edwards, their traveling agent and salesman, a valise containing samples; Edwards bought from defendant's agent at Northampton a ticket entitling him to be carried to Boston over the defendant's line and a connecting road, and received a check for the valise. On his arrival in Boston the valise containing the samples was not delivered to him, and action for their value was brought *by his employers.* In deciding the case the Court said:

"The defendants had no contract with the plaintiffs. Their contract was with Edwards, the plaintiff's agent; and it was a strictly personal contract, for his safe transportation over the railroads, to which the carriage

of suitable personal baggage was merely incidental. Edwards had no right to transport merchandise under cover of his personal baggage; much less could he take merchandise in that manner which belonged to other persons, and thereby give them the rights of a contracting party against the defendants. *Jordan vs. Fall River Railroad Co.*, 5 Cush 69. *Collins vs. Boston & Maine Railroad*, 10 Cush. 506. *Hawkins vs. Hoffman*, 6 Hill, 586. The Court upon a contract therefore cannot be supported."

In *Michigan Central Railroad Co. vs. Carrow* (73 Ill. 348), a passenger presented to the agent of the carrier a trunk containing $30,000 worth of jewelry, and it was destroyed by fire that consumed the baggage-car. It was such a trunk *as is generally carried by commercial tavelers*, but the passenger presented it as ordinary baggage, without saying anything as to the nature or value of its contents. He brought an action and recovered in the trial court a judgment for the value of the trunk and contents. In reversing that case, the Supreme Court reviewed all the authorities and among other things it said (p. 350):

"We adopt as an accurate expression of the law, what counsel concede: that a traveler who presents to a carrier of passengers a trunk or valise, such as is commonly used for the transportation of wearing apparel, represents by implication, that it contains only such articles as are necessary for his comfort and convenience on the journey, and if, in fact, it contains merchandise, the traveler is guilty of such fraud as to absolve the carrier from the extraordinary liability of an insurer.

But, to avoid the force of this principle, it is insisted if property is received by a carrier without inquiry, he will be liable for its loss, whatever its value, if it is contained in such a parcel or box as to indicate its nature, or is so packed as not to mislead or deceive the carrier as to its contents, and induce him to believe it is of

a different kind and of less value than it is in fact. The doctrine contended for has no application to the facts of the case. The company had no actual notice appellee's trunk contained anything other than his wearing apparel, and such articles of convenience as a passenger usually carries with him. It was brought to the company's depot with the other passengers' baggage, was checked as ordinary baggage, and was, with his knowledge and consent, placed in the common baggage-car. He paid no extra compensation, nor did he bargain for any care in regard to it, other than such as it was the duty of the company to bestow upon the baggage of other travelers. There was nothing in the character of the trunk itself that indicated it contained valuable merchandise. It was such a trunk as is usually carried by commercial travelers. A person accustomed to seeing such trunks would, no doubt, recognize this one as one of that class. Whether the baggageman who checked appellee's baggage had any knowledge of the use of such trunks, does not appear from anything in the evidence. He had no acquaintance with appellee, and did not know what his business was. But, conceding it was of such weight and structure as the baggage-master must have known it was a commercial traveler's trunk, he had no reason to suspect that, in addition to the articles usually carried by a traveler, it contained valuable jewelry, comprising a stock equal, if not exceeding in value that which is commonly kept in a retail store. Appellee presented it as ordinary baggage, and the officer of the company had the right to rely on the representation, arising by implication, that it contained nothing else. The law imposed no obligation upon him to make any inquiry as to its contents. Had the agent of the company been informed of the contents of the trunk, or had it been so packed that the nature of the contents was discernible, and the company, with such knowledge, undertook to carry the goods, there is no reason why it would not be liable as a common carrier, and so the authorities hold. But that is not this case. The carrier in this case had no knowledge of the contents of the package, either direct or constructive.

The cases that hold the doctrine, the carrier is to inquire as to the contents of the package offered, are

in reference to carriers of freight, and not of passengers and their baggage. There is a reason for the distinction that will readily be perceived and appreciated. Carriers of freight receive all kinds of packages, some valuable and others of trifling value. This fact has been held to impose upon them the duty, in all cases, in the absence of fraud and deceitful practices, to inquire of the shipper as to the contents of the package, if they would protect themselves in the carriage of valuable freights. It is their duty to receive all kinds of freight, whether of great value or otherwise. The shipper is not bound, in the first place, to disclose the nature of the contents of the package, unless he is inquired of concerning it.

But this rule presupposes good faith in the shipper. If the owner be guilty of any fraud or imposition, in respect to the carrier, as to the nature and value of the parcel, he can not hold him liable, in the capacity of an insurer, for any loss that may occur. This is a reasonable and just rule. Fraud vitiates all contracts into which it enters. Common carriers are compelled, by the nature of their vocation, to transport goods for all classes of people, and while they are, for politic reasons, to be held to the strict liability of insurers of the parcels intrusted to their care, the law imposes the duty upon the owner to act with common honesty. He will not be permitted to practice any imposition upon the carrier or delude him as to the nature and value of the goods to be transported. The authorities on this branch of the law are quite numerous, and it is not necessary to do more than to cite a few of them. 2 Kent. 603 and 604; Story on Bailments, sec. 565; *Cincinnati and Chicago Air Line Railroad Co. vs. Marcus*, 38 Ill. 219; *Chicago and Aurora Railroad Co. vs. Thompson*, 19 Ill. 578; *Relp vs. Rapp*, 3 Watts & Ser. 21.

But the rule is different in regard to the baggage of a traveler. As we have seen, the fact the traveler presents a parcel as baggage, whether contained in a trunk or satchel or other convenient mode of carrying baggage, it is upon the implied representation it contains only baggage, and the carrier is not bound to inquire as to the specific contents. There is no reason for the adoption of any other rule. No considerations of public conveni-

ence require it. By common custom the personal luggage of a traveler is carried without extra charge. Passenger carriers do not assume to carry anything as baggage except such things as may be necessary to the convenience and comfort of the traveler, and perhaps sufficient money to defray the expenses of the journey. This fact is well known to all persons who seek passage in railway carriages. With a great majority of travelers the amount of baggage carried is of no considerable value. The companies have no arrangemens for the carrying and safe keeping of costly articles. The contract is simply for passage and the usual personal baggage not exceeding in weight the amount prescribed by the regulations of the company.

If this implied contract with the carrier of passengers is to be varied, modified or enlarged, it must be by direct notice of the contents of the package offered as baggage, which, in effect, would amount to a special contract. The company may rely upon the representation that whatever is offered as baggage is that, and nothing else. The law seems to be settled it need not inquire as to its contents. If the passenger has merchandise checked as baggage without such notice, the company can not be held liable as a common carrier. *Cahill V. L. & N. W. Ry. Co.* 10 C. B. (N. S.) 154; *Chicago and Cincinnati Air Line Railroad Co. vs. Marcus, supra; Collins vs. Boston and Maine Railroad Co.*, 10 Cush. 506; *Great Northern Railroad Co. vs. Shepherd*, 8 W. H. & G., 30; *Balson vs. Donovan*, 4 B. & A. 21."

The Court then reviews at considerable length a large number of English and American cases, and concludes its opinion as follows:

"There is nothing in the evidence from which the conclusion could be fairly drawn the company had knowledge of the contents of appellee's trunk, nor was there anything in its appearance that made it the duty of the agents to make inquiry as to what it really contained. Who would suppose a small trunk, which could be readily picked up and carried off by any one, would be suffered by the owner to be thrown upon the platform in the night time, and treated as baggage of ordinary

value, when in fact it contained $30,000 worth of diamonds and costly jewelry? To hold the company liable, in the event loss should occur, for not making investigation as to the contents, would be to extend the responsibility of railroad companies to an unprecedented extent beyond anything demanded by any considerations of public policy. The more reasonable rule, and the one best calculated to subserve the ends of justice, is, the passenger, who has the information, should apprise the company of the extraordinary value of the package he desires to have checked as baggage, and, upon failure to do so, if loss ensues, he must bear the consequences.

Under the most friendly criticism, appellee's conduct savors of legal fraud, not to characterize it by any stronger terms. He is not, therefore, in a position to demand any favorable construction of the evidence. According to the view we have taken, the verdict is contrary to the law and the evidence."

In *Haines vs. Chicago, St. Paul, M. & O. Ry. Co.* (29 Minn. 160) the facts stated were as follows: The plaintiff purchased a ticket over defendant's road from Menominee to Stillwater and delivered to defendant a valise alleged to contain "goods, wares and merchandise, commonly called notions," for transportation from Menominee to Stillwater. Defendant received the package and gave a check for it. The only agreement made between plaintiff and defendant regarding it was simply the usual implied contract between carrier and passenger to carry the ordinary personal baggage of the passenger, and under that implied contract defendant received the valise as the ordinary baggage of plaintiff for transportation. The valise and its contents were lost and plaintiff recovered in the trial court a judgment for their value. In reversing that judgment, the Court said:

"Two things are to be observed regarding this statement of facts: *First*, the contents of the valise were not

the 'personal baggage' of plaintiff; at least it does not appear and is no where alleged that they were; and the description of the property contained in the complaint, we think, affirmatively shows that they were not. *Second*, it is not alleged or admitted that the defendant had any notice that the contents of the valise were not plaintiff's personal baggage. On such a state of facts plaintiff would not be entitled to recover. A carrier of passengers for hire is only bound to carry their personal baggage; and if a passenger delivers to a carrier as baggage a trunk or valise containing property, not his personal baggage, and the carrier has no notice for the fact, he is not responsible as carrier or insurer for its loss. The reason is that as to such property the carrier has made no contract."

In *Pfister vs. Central Pacific Railroad Co.* (70 California, 169), the plaintiff was treasurer of Santa Clara County, and having purchased for himself and three employes, four tickets from San Jose to Sacramento, he insisted on their right to enter a passenger train and take with them, in leather satchels, over $90,000 in gold coin of the United States. The conductor of the train refused to permit them to carry on his train such a sum of money as personal baggage, and the plaintiff was required to deliver the money to an express company for transportation. He then brought suit against the railroad company, and averred, among other things, that *it had been the custom of the railroad company to permit the county treasurer to carry like sums of money in like satchels upon its passenger trains, and that no notice had been given of any change.* In deciding the issues presented in that case, the Court said:

"The right of plaintiff as a passenger must be determined by the contract he made with defendant. He purchased four first-class passenger tickets from San Jose to Sacramento, which entitled him and his three em-

ployes to transportation in the first-class passenger coaches of defendant between the points indicated, and gave to them a right to have their luggage, not exceeding one hundred pounds to each person, transported at the same time free of charge. It gave to them no right to travel in a baggage, express or freight car, but in the regular passenger car or cars of the defendant, and the contract gave to them no right to transport, either in their own charge or that of the defendant, any merchandise or property not included in the term 'luggage.' The law takes no note of what property a passenger carries upon his person, but beyond this he may not, by virtue of his contract for passage, carry, either free of charge or by paying an extra charge, property not included within the import of the term 'luggage.' * * * Plaintiff must be presumed to know the legal effect of the contract he had made, and to be subject to its terms, conditions and limitations equally with the defendant. The fact that for ten years the defendant had permitted the county treasurers of Santa Clara County to carry with them upon its passenger trains the money which they were by law required to pay over to the State treasurer, neither enlarged nor abridged the contract between it and plaintiff. If defendant was not legally bound to extend this favor, its liberality to others, or to plaintiff himself, could not be urged as a binding rule for the continuance of such practice."

The English rule in cases of this kind, is stated in *Cahill vs. L. & N. W. Ry. Co.* (10 C. B. N. S., 154.)

In that case a passenger brought to the station a box covered with a black leather case, which had painted on the top of it lengthwise in the center, the name of "M. Rimmel" in white letters two inches long, and it had painted across the top on each end, the word "Glass."

The box having been lost, suit was brought and the case finally came before Erle, C. J., Willes, J., and Byles, J., and they all delivered opinions. Erle, C. J., in his opinion (page 170) said:

'It seems to me that it would be introducing a most pernicious rule to hold, that if a package, which from the appearance is likely to contain merchandise, is brought to a railway by a passenger the company's servants are bound to inquire whether it consists of what is ordinarily understood to be personal luggage or merchandise, at the peril of being held liable for a loss, if loss occurs. * * *

And again (page 170) he says:

"It is said that the plaintiff had no express notice that he ought to have paid for the carriage of his box; but on the other hand, the defendant had no express notice that it contained merchandise which they were entitled to charge for, and not personal luggage."

And Byles, J., (page 178) said:

"I do not think the company's servants were bound to ask any questions. The package was handed to them as ordinary luggage. That being so, I agree with my lord in adopting what was said by Lord Wensleydale in Great Northern Ry. Co. app. Shepherd, Resp. 8 Ex. 30, viz: That the defendants conduct—without imputing to him any fraudulent intent—in delivering a package of this description without communicating the fact that it contained merchandise, was in the nature of a concealment, and amounted to a positive representation that it contained ordinary personal luggage only. If that be so there was no bailment, and no contract."

The same case afterwards come before *Cockburn, C. J.*, and is reported in 13 C. B. N. S. 818, and the reasoning, as well as the conclusions, of *Erle, C. J.*, and *Byles, J.*, were fully approved.

We might quote from many other cases, both American and English, which sustain the same views, but they would probably add nothing of importance to what has been already said. We have quoted enough to show that the opinion of the Circuit Court, in this case, is not in line with what seems to be the accepted rule, and un-

less this Court shall conclude to reject the reasoning of the adjudged cases, it would seem clear that the decree of the Circuit Court should be reversed.

VI.

The petitioners in this case, the firm of Perry Brothers, can not recover upon any supposed contract with the receivers, because the receivers had no contract with the firm.

Whether the petitioners intended to base their action on a supposed contract, or on an alleged tort, it is rather difficult to decide, and probably it was not necessary for them, in an intervention, to observe any of the technical rules of pleading, but in its opinion the Circuit Court seemed to place the liability of the receivers *on a supposed breach of contract.*

In its opinion the Court said: "Having checked the trunk by their agent as personal baggage, knowing, or having reason to believe that it contained jewelry, the receivers became bound to safely transport it to destination, which they did not do, *and they are liable for the damages that resulted from a breach of the contract.*"

Surely there can be no recovery in this case for the breach of any contract between the receivers and the co-partnership firm of "Perry Brothers." The only contract the receivers had was a purely personal one with Arthur J. Perry, the man who purchased the ticket, and that contract was only to carry *him and his personal baggage* from Springfield to Petersburg. The purchase of a ticket by Arthur J. Perry created no privity of contract between the receivers and the firm of Perry Brothers.

The Circuit Court was, therefore, clearly wrong in saying the receivers were liable to the firm of Perry Brothers, for the damages that resulted from the breach of any contract the receivers had with the firm, for none such existed.

The point was expressly ruled in *Stimson vs. Connecticut River Railroad Company*, 98 Mass., 83; *Jordan vs. Fall River Railroad Co.*, 5 Cushing, 69; *Collins vs. Boston & Maine Railroad Co.*, 10 Cush. 506, and in *Hawkins vs. Hoffman*, 6 Hill, 586.

For the errors assigned, the decree of the Circuit Court should be reversed and, on the admitted facts in the case, the petition should be dismissed.

WELLS H. BLODGETT,
Attorney for Appellants.

148 U.S. 627

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1892.

TERM NO. 167.

SOLON HUMPHREYS ET AL., RECEIVERS OF THE WABASH, ST. LOUIS AND PACIFIC RAILWAY COMPANY,
Appellants,
vs.
JOHN H. PERRY ET AL.,
Appellees.

Appeal from Circuit Court of the United States, for Northern District of Illinois.

Brief for Appellees.

RICHARD S. TUTHILL and
FREDERICK C. HALE,
Solicitors for Appellees.

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vs.
JOHN H. PERRY ET AL., *Appellees.*

Appeal from Circuit Court of the United States, for Northern District of Illinois.

BRIEF FOR APPELLEES.

STATEMENT OF THE CASE.

A largely experienced and competent master in chancery has heard all the evidence in this case, and has made a full report as to the facts, which report has also received the sanction of the Circuit Court upon full consideration and argument; we feel that we can make no statement of the case that will be so satisfactory as is that which has thus the stamp of authority. With the permission of the court we shall therefore adopt the facts found by the master and confirmed by the court as our statement of the case. (*Record 15 to 31*).

"Findings of Fact."

I.

"That the intervening petitioners, John H. Perry, Arthur J. Perry, James H. Perry, and Frank A. Perry, were, on and before the 30th day of January, 1885, doing business in Chicago as wholesale dealers and jobbers in jewelry and watches under the firm name and style of Perry Brothers"

II.

"That on the 30th day of January, 1885, said Arthur J. Perry, who was then traveling for said firm and engaged in the business of jobbing jewelry and watches from place to place in the State of Illinois, was at the city of Springfield, in said State of Illinois, and then and there purchased of the agent at the station or depot of the Wabash, St. Louis & Pacific Railway, then under the control of said receivers, a ticket for his passage from Springfield, Illinois, to Petersburg, Illinois, over and upon said road of said railway company; that, having purchased such ticket, he presented to the station agent of the said railway company a trunk containing jewelry, watches, and merchandise belonging to said firm, such as was necessary for him in the prosecution of the business aforesaid and such as is commonly carried by persons traveling from place to place and engaged in the business of jobbing watches and jewelry; that this trunk of jewelry weighed 250 pounds; that the station agent weighed and checked said trunk and charged 25 cents for the 100 pounds overweight, 150 pounds of baggage only being allowed to each passenger; that this trunk was a heavy, dark, iron-bound trunk, of small size, as is commonly used by jobbers of jewelry and watches, and known as a jewelers' trunk; that the station agent at Springfield, when said trunk was presented to be checked, made no inquiries of said Arthur J. Perry as to what the said trunk contained or whether the same contained jewelry; that no representations were made by said Perry as to the contents thereof; that about 5.30 o'clock in the afternoon the regular train of the said railway company running west over said road and through Springfield and Petersburg arrived at Springfield; that said train consisted of a locomotive, a combination car, one first-class and one second-class car; that one end of said combination car was used for transporting matter sent by express, the other end for the transportation of the baggage of passengers of the said railway company, while the middle

was used as a railway mail car; that in the middle compartment, or that used by the railway mail service, was contained an old-fashioned cannon stove, cracked and imperfectly fastened to the car, with a door that rested on hinges, without a latch or catch; that there was nothing to prevent it from falling open if jolted or shaken, and it did so of its own accord; that it was in a very dilapidated and unsafe condition; that frequent complaint has been made of the unsafe condition of said stove by the clerk of the railway mail service running over the road, especially when the car was repaired in the shops in 1884; that the agent of the railway company placed said trunk in the baggage compartment of the said combination car, and that said Arthur J. Perry entered the first-class car, and that said train left Springfield for the West immediately thereafter."

III.

"That a little after half past 6 o'clock in the evening, and when it was about a mile and a half beyond Tice and about two miles from Petersburg and while passing around a curve, the train ran off the track, the locomotive broke loose, and all the cars constituting the train were turned over upon their sides; that the stove in the mail compartment of said combination car was broken in pieces by the shock when the car was thrown from the track and rolled upon its side, and the fire that was burning in the said stove was communicated to the contents of the mail car and almost immediately to the other compartments in said combination car; that the trunk of the said Perry contained in the baggage compartment was burned and the contents thereof wholly destroyed, except a small salvage from the wreck and fire, which was made by the said Perry; that the said Perry, as soon as he was able to escape from the passenger car, which had been overturned and rolled into the ditch, proceeded to the baggage car to ascertain the condition of his trunk, but was unable to rescue it from the flames until after it had been nearly destroyed as aforesaid."

IV.

"That the said accident to the said train was caused by the spreading of the rails upon which the same ran, and that such spreading was due to the defective, decayed, and worthless ties upon which, in part, the rails were laid; that the railroad at this point was in an unsafe condition; that this unsafe condition of the road was of such a character and so long continued that it must be presumed to have been

known to the officers of the road and to the receivers thereof."

V.

"That it was the custom of the trade, among wholesale jewelers and jobbers in jewelry and watches, not only in the West but through the central and eastern portions of the United States, and had been for 15 or 20 years prior to the time of this accident, to sell jewelry to retail dealers throughout the country by selecting an assortment of *of* goods such as would ordinarily be required by the retail trade, and packing them in a jewelers' trunk and traveling from place to place and making sales of the goods, not from samples but by selling and delivering from the stock contained in the trunk; that about three-fourths of the entire jewelry sold by jobbers to the retail trade through the country was sold in that manner; that the large wholesale jewelry firms in Chicago had for years carried on their business in that manner, and that this was so generally done that it must be presumed that not only the agents of the railroads but the officials thereof were cognizant of this custom of the trade; that in carrying on the trade in this manner trunks filled with jewelry for the purpose aforesaid have been commonly received by the agents of the railroads as baggage and checked as such; that while this was doubtless done without any inquiry on the part of the agents of the railroads or any declaration on the part of the traveling men who presented the same, yet that the business had been transacted in this manner so generally and for so long a time, and the kind of trunks commonly used by such traveling men was so well known to those accustomed to handling baggage, that those familiar with receiving and checking baggage must be presumed to have been aware of the contents of such trunks; that station agents and baggagemen were undoubtedly sufficiently familiar therewith to know that they did not contain the ordinary wearing apparel and baggage of persons engaged in ordinary traveling and to be put upon inquiry as to their contents, if it was their duty so to inquire."

VI.

"That the trunk containing the jewelry which was destroyed in manner aforesaid was a very small, heavy, iron-bound trunk, one well known in the trade as a jewelers trunk, and was constructed differently from trunks used by travelers for transporting ordinary baggage, and was so

constructed that any person accustomed to receiving and checking and handling trunks of commercial travelers, must have been aware that it did not contain the ordinary wearing apparel and baggage of an ordinary traveler; that its construction and character and the fact that it weighed 250 pounds and required the payment of 25 cents extra on account of its excessive weight were circumstances which could not fail to attract the attention of the agent who received and checked the said trunk and to put him upon inquiry as to the nature of its contents, if it was his duty to make such inquiry."

VII.

"That the stove in the middle compartment of the combination car, and from which the fire was communicated which consumed and destroyed the property in question, was in a notoriously dilapidated and unsafe condition, and that this fact was well known to those in charge of the trains running over this road; that on other roads, and notably upon the cars of the North Western Railway Company, there are and have been for some years in use, stoves which, by the application of proper appliances and safeguards, are rendered comparatively safe in case of an accident of this character."

VIII.

"That the goods contained in said trunk, when the same were packed and the said Arthur J. Perry left Chicago upon the trip aforesaid, had cost the intervening petitioners, as per the bills of the manufacturers from whom the same had been bought, the sum of $8,139.92; that this, however, did not represent the entire cost of the goods, since to the said costs, as shown by the bills of the manufacturers of said goods, there should be added the value of the time, skill and expense required in making such purchases, the cost of insurance and the like, and also the value of the time and skill required to select from the stock this particular lot of goods and pack the same ready for transportation; that it does not definitely appear, however, by the evidence, what was the actual additional cost aforesaid; that the trunk and its furniture was worth the sum of $87.50; that the said Arthur J. Perry had sold after his departure from Chicago, and before the destruction thereof, goods from the said trunk amounting to $408.88 at the gross selling price thereof; that it does not definitely appear at what profit above the cost

thereof the said goods were sold, but the master estimates, as well as he is able, from the evidence, that the same were sold at an advance of 15 per cent upon the manufacturers' price thereof; that the goods sold at the net manufacturers' prices thereof would, on that basis, represent a valuation of $347.55, and that the goods which were contained in the trunk at the time of the disaster represented, at the net manufacturers' prices thereof, the sum of $7,792.31; that the salvage by intervening petitioners from the debris of the trunk, as shown by the evidence, was $612; that just before the time the said Arthur J. Perry started upon his trip an inventory of this property had been made by the intervening petitioners; that this inventory was made upon the basis of the value of said property at that time to the intervening petitioners, estimating the same at jobbers' prices—that is, at the market prices at which property of this character was sold by jobbers to the trade; that the profit to the wholesale dealer and jobber upon goods of that character at that time was from 10 to 30 per cent, depending upon the style and quality of the goods; that the value of said goods, as per such inventory, was $9,818.46, including the trunk and its furniture."

IX.

"That there was, and for some time previous to the accident had been, no bucket in said compartment car; that as soon as the clerk of the railway mail service was able to do so he called for a bucket and for assistance, in order that he might extinguish the fire, but having no bucket threw some snow thereon, but was unable to extinguish it in that manner; that when the car was derailed it was thrown very near to a small pond of water or creek; that had the clerk of the railway mail service been able to find a bucket he could easily have extinguished the fire before it gained much headway and before the property of the intervening petitioners had been destroyed or injured by the fire."

X.

"That the branch of the Wabash system upon which this accident occurred, known as the Springfield & Northwestern, and running from Springfield to Havana, in a road over which comparatively few trains are run and over which there is a small amount of passenger travel and a comparatively small amount of freight business is done; that the road at and near the place where this accident oc-

curred was at the time of such accident in a condition as good as when the receivers took possession thereof; that some repairs had been made thereon by the receivers; that notwithstanding this the road, as before stated, was in an unsafe and dangerous condition, and the accident was directly attributable to that fact."

The decree appealed from, as to the amount due, follows the master's finding, which reads: (*Record 47, 48, 49.*)

"It further appears from the evidence that the net cost of the goods contained in the trunk, as per bills from the manufacturers thereof, who sold the same to intervening petitioners, was $8,139 92—that is, the firm paid the manufacturers that sum, and the actual cost of the goods was that sum, increased by the expense incurred and the value of the time employed in the purchase of the goods. The proofs do not show an appreciation or depreciation in the value of the goods after their purchase.

"The intervening petitioners, however, are unable to make any definite estimate of the cost of replacing these goods, so that the master is unable to ascertain definitely what ought to be added to the purchase price in order to ascertain the actual cost of the goods to intervening petitioners at the time they were selected and packed in this trunk. In the absence of such definite proofs the master can only find that the jewelry contained in the trunk when Mr. Perry started upon his tour was worth the sum paid therefor to the manufacturers, namely, $8,139.92; that the trunk and its furniture *was* worth the further sum of $87.50, making the total value of the trunk and its contents $8,247.42. From this sum should be deducted the value of the jewelry sold by Mr. Perry before the accident, which, at jobber's prices, was $408.88. Deduct from such jobbers' prices, say, 15 per cent or $61.33 profit, and the value of the goods sold by Mr. Perry is found to be $347.55. This amount added to the value of the salvage, $612.00, makes $959.55, which amount deducted from $8,247.42 leaves $7,287.87, which the master finds to be the value of the property destroyed by reason of the negligence of the receivers, and which amount intervening petitioners are entitled to recover. For clearness the master tabulates as follows:

Manufacturers' bills for jewelry	$8,139 92
Value of trunk, &c	87 50
Total value	8,227 42

Deduct value of goods sold.....	$347 55	
Deduct proceeds salvage	612 00	
		959 55
Total loss.....		$7,287 87

"The master therefor finds that the intervening petitioners are entitled to recover from the receivers the said sum of $7,287.87 and costs."

ARGUMENT.

I.

In the light of all the decisions of the Federal courts, from *Kuter* v. *M. C. R. R. Co.*, 6 Bissell 35, decided by Judge Drummond in 1853, and *Hillman* v. *Holladay*, Woolworth, 370, decided by Justice Miller in 1868, through *Hannibal R. R.* v. *Swift*, 12th Wall. 273, decided by this court in 1871, down to *Jacobs* v. *Tutt*, 33 Fed. Rep. p. 412, opinion of Judge Thayer in 1888, and *L. C. & L. Ry.* v. *Switz. Ins. Co.*, 131 U. S. S. C. p. 204, decided by this court in 1888, we respectfully submit that the decisions of the courts of the United States are uniform and conclusive in such cases as this, and to the effect that appellants are liable herein as common carriers and insurers of the trunk and contents committed to their charge. So far as we know, not a single case involving the loss of merchandise shipped as baggage has ever been decided adversely to the claimant by any United States court.

II.

We believe and urge that in this case the negligence of the appellants is so great and apparent as to make them also liable as bailees. This liability is emphasized by their act in asking and receiving additional compensation for carrying the trunk committed to their care.

We respectfully submit that appellants were guilty of gross negligence and also liable on that account—

1st. In permitting the roadbed, ties and rails to be in the condition shown by the evidence.

2d. In continuing to use the stove in the baggage car,

knowing its "notoriously dilapidated and unsafe condition."

3d. In not having in said car a bucket whereby the fire might have been extinguished. (*Record 75.*)

III.

A brief review of the cases most clearly in point decided by this court and by judges of the courts of the United States upon the circuit and a reference to a few others is all that we deem necessary by way of further argument.

In the case of *Hillman* v. *Holladay*, 1 Woolworth C. C. R. 370, Judge Miller said: "There is evidence tending to show that the carrier knew that the baggage contained gold. If he did he was not deceived. Cohn may have intended to deceive and defraud him. If he did he failed to do so. If the carrier knew that the carpetsack contained gold and took not the usual rates chargeable for gold, but only such as were chargeable for ordinary extra baggage, then he was not defrauded."

In *Hannibal Railroad* v. *Swift*, 12 Wallace, p. 273, Mr. Justice Field, speaking for the court, said: "When a railroad company receives for transportation in cars which accompany its passenger trains, property of this character, in relation to which no fraud or concealment is practiced or attempted upon its employes, it must be considered to assume, with reference to it, the liability of common carriers of merchandise. * * *" If property offered with the passenger is not represented to be baggage, *and is not so packed as to assume that appearance*, and it is received for transportation on the passenger train, there is no reason why the carrier shall not be held equally responsible for its safe conveyance as if it were placed on a freight train, as undoubtedly he can make the same charge for its carriage."

In *N. Y. C. & H. R. R. R. Co.* v. *Fraloff*, 100 U. S. 24, the court through Mr. Justice Harlan again held to this view; say the court: "It is also undoubtedly true that the carrier may be discharged from liability for the full value of the passenger's baggage if the latter by false statements, or by

any device or artifice, puts off inquiry as to such value, whereby is imposed upon the carrier responsibility beyond what it was bound to assume in consideration of the ordinary fare charged for the transportation of the person."

The case of *Jacobs* v. *Tutt*, 33 Fed. Rep. 412, was against the present defendants and is directly in point. Thayer, J. who presided at the trial, said: "The defendants' station agent at Wakenda having checked the trunk in question as baggage, with knowledge that it contained jewelry, and without any concealment practiced by the plaintiff as to the contents of said trunk or the value of the same. The plaintiff is not estopped from demanding full compensation for the trunk and its contents as though the conte nts were in fact, ordinary baggage and not merchandise." Citing *R. R. Co.* v. *Fraloff*, 100 U. S. 27-8.

Many decisions by the Supreme Courts of the various States of the Union and by English courts hold the same doctrine.

In *Winter* v. *Pacific R. R. Co.*, 41 Mo. 503, the court say: "But if a traveler takes with him other articles which do not come strictly within the denomination of baggage and exposes them to view *so that no concealment is practiced*, and the carrier chooses to treat them as personal baggage and carries them accordingly and a loss occurs, he will be held responsible therefor." Citing *Great Northern R. Co.* v. *Shepherd*, Eng. Rail. Cas. 310.

In *Stoneman* v. *Erie Ry. Co.*. 52 N. Y, 429, Peckham, J., said: "I think it safe to say that if the carrier knew or had notice of the character of the goods taken as baggage and still undertook to transport them he is liable for their loss, although they are not travelers' baggage." Citing 2 Red. on Rys. 149–151, note 5 and cases.

In *Texas, etc., R. R. Co.* v. *Capps*, 2 Civil Cases 34, the Texas Court of Appeals say: "It is a reasonable and correct doctrine that when a railroad company, through its ticket or baggage agent receives articles for transportation as baggage knowing at the time that such articles are

not properly baggage, the company will be responsible therefor as a common carrier, and will be estopped from denying that the same was baggage." Citing

Butler v. *H. River Ry.*, 3 E. D. Smith, 571.
Redfield on Carriers, Sec. 78 & notes.
2 Redfield on Railways, p. 46.
Hutchinson on Carriers, Sec. 685.

In *Butler* v. *Hudson R. R. R.*, 3 E. D. Smith, 571, the court say:

"If" (the trunk or package) "not represented to be baggage, *or if not so packed as to assume that appearance*, there is no reason why freight should not be charged or why the carrier should not be responsible."

In *Sloman* v. *Great Western Ry. Co.*, 67 N. Y. 208, the question submitted to jury was:

"Did baggage master have notice or know that the trunks delivered to him contained *other than ordinary baggage?*" This was held proper.

In *Millard* v. *Mo. K. & T. R. R.*, 86 N. Y. 441, it was held that a recovery for the personal baggage lost will not bar a recovery for merchandise in same trunk.

And finally, as conclusive upon the facts of this case, we call the attention of the court to the recent case of *L. C. & L. R. R. Co.* v. *Switzerland Marine Insurance Co.*, 131 U. S. 440, in which the railroad company was held liable for the loss. The facts in that case, though nearly identical, were not so strong against the railroad company as in the case now under consideration; for in the case cited the finding was that the checking agent did not have notice when he checked the trunk, that it contained "jewelry, or property other than personal baggage," and in this case the master finds (*Record 21, 22*) that such agent "must have been aware that it did not contain ordinary wearing apparel," and that it was his duty to make inquiry, and the very man who checked it, testified (*Record 231*) that he would suppose that such a trunk as the one he checked for appellees contained either a stock of jewelry, or hardware or stationery

and (*Record 236*), "would know that it was not personal baggage."

Respectfully submitted,

RICHARD S. TUTHILL,

FREDERICK C. HALE,

Solicitors for Appellees and of Counsel.